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THE

ENGLISH GOVERNMENT

AND

CONSTITUTION.

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AN ESSAY ON THE HISTORY

OF

THE ENGLISH GOVERNMENT

AND

CONSTITUTION

FROM THE REIGN OF HENRY VII. TO THE PRESENT TIME.

BY JOHN, EARL RUSSELL.

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'Methinks I see in my mind a noble and puissant nation rousing herself like a strong man after sleep, and shaking her invincible locks; methinks I see her as an eagle renewing her mighty youth, and kindling her undazzled eyes at the full midday beam, purging and unscaling her long-abused sight at the fountain itself of heavenly radiance, while the whole noise of timorous and flocking birds, with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms.' MILTON.

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TO

THE MEMORY

OF

CHARLES, EARL GREY,

THE CONSTANT FRIEND OF MR. FOX

IN PUBLIC AND IN PRIVATE LIFE;

THE UNDAUNTED CHAMPION OF CIVIL AND RELIGIOUS FREEDOM

IN ALL TIMES AND IN ALL CIRCUMSTANCES;

THE ENLIGHTENED LOVER OF HIS COUNTRY IN ALL HER

PERILS AND PERPLEXITIES,

THIS BOOK

IS DEDICATED

AS A TOKEN OF AFFECTION AND ADMIRATION,

BY

THE AUTHOR.

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PREFACE

TO

THE PRESENT EDITION.

HAVING long intended to publish a New Edition of my Essay on the Constitution, I was struck, when I came to prepare the work, with the vast difference which exists between the state of affairs in 1823, and their present condition. I was therefore obliged to choose one of two alternatives: either I must have added innumerable notes, and altered a great part of the work, to make the new patches fit into the old garment; or I must write an Introduction explaining the great changes which the last forty years have brought forth. I have preferred the latter course.

With regard to the work itself, I have contented myself with some omissions, and a few notes pointing out the difference of the times. The reader must supply for himself in all cases the remark, that the work was written and revised between 1820 and 1823.

R.

January 1865.

INTRODUCTION.

WHEN I published, forty years ago, the work of which the present is a new edition, I said in it, 'Let Englishmen bear in mind that the old monarchies of the Continent were so vicious in structure, and so decayed in substance, as to require complete renovation, while the abuses of our Constitution are capable of amendments strictly conformable to its spirit, and eminently conducive to its preservation.'

Events have justified my belief. France has undergone the Revolution which overthrew Charles the Tenth, and the Revolution which overthrew Louis Philippe. Italy has effected a complete and happy revolution. Austria is undergoing an auspicious change in her constitution; Prussia has hardly commenced the process; Spain and Por-

tugal have not fully completed it. England, on her side, has made many peaceful reforms, of which I propose in this Introduction to trace the outline.

So long as the alarm created by the French Revolution lasted, the party which had sustained Lord North in the American war and Mr. Pitt in the French war remained unbroken. During nearly sixty years of power, that party had devoted all its energies to the suppression of colonial or domestic revolt, and the prosecution of war against a foreign enemy.

The few measures of a liberal character, Mr. Burke's Bills of Economical Reform, and the abolition of the Slave Trade, were the fruit of the short intervals when office was held by the Whig party in 1782 and 1806.

But as the fear of foreign jacobinism and domestic disturbance subsided, the Whig party gained gradually upon public confidence. Still their triumph over ancient prejudices and compact party strength would have been remote, had not the great Tory body separated itself into two divisions.

The one using the name of Mr. Pitt abhorred his wise views regarding Catholic disabilities and commercial policy, and, according to the happy

comparison of Mr. Canning, adored him only in the hours of his eclipse.

The other division, while retaining their old allegiance to the war policy of 1793, and the severe restrictive laws which accompanied it, yet saw in the altered circumstances of the time reasons for breaking down the bars which separated one portion of the King's subjects from another, for appealing to the reason rather than the passive submission of the people, and for letting 'persuasion do the work of fear.'

These different views occasioned from time to time much rumbling and jarring, and finally such an upheaving of the fiery element as to burst the solid mass and heavy level, which for more than half a century had lain incumbent upon the soil of Great Britain.

Of those who took the more enlightened view of the interests of their country, Mr. Canning, Mr. Huskisson, Lord Palmerston, and Mr. Grant were the first.

At a later period, Sir Robert Peel, Lord Aberdeen, Lord Lincoln, Mr. Gladstone, and Mr. Sidney Herbert found the Tory yoke intolerable, and joined the party of progress. In the same period the

Radical party, which during the war had been composed of a few scattered remnants, became under Mr. Joseph Hume a considerable, consistent, and active body.

The separations, the adhesions, and the formations, took place at different times, and on different questions. But substantially the great changes which have taken place during forty years, between 1823 and 1863, have been the work of these parties, sometimes acting together with the Whigs and Radicals, or, as more frequently happened, co-operating from opposite benches and advancing in different columns, but with equal regard to the promotion of the great principles of Reform.

The State of England in 1823 was not auspicious. In 1817 the Habeas Corpus Act was suspended, and spies were sent from the Home Office into the manufacturing counties, who, acting according to their nature, and not according to their instructions, stimulated the crimes which were afterwards punished on the scaffold.*

* See 'State Trials,' vol. xxxii. p. 859, and 'Parliamentary Debates,' vol. xxxvi. pp. 1003 and 1016, with other references in the 'State Trials,' *loco cit.* Oliver, the spy, did all in his power to promote insurrection.

In 1819 Bills were introduced by Lord Castlereagh, described by him as measures 'of severe coercion.'

The general state of the laws, finances, and trade of England was most backward. The criminal law was full of capital penalties, some for very trifling offences, such as cutting down a growing tree, or being seen with the face blackened on the high-road. Foreign trade was cramped by monopolies and restrictions. Taxes were imposed on the necessaries of life; excise duties were very onerous, and the duties of customs, extending to many hundred articles, produced as much vexation to merchants as revenue to the State.

Protestant Dissenters were only indirectly admitted to office. Roman Catholics and Jews were expressly excluded both from Parliament and from political offices. Parliamentary Reform was successfully opposed. Even when a corrupt borough was extinguished, the populous and flourishing borough of Leeds was not enfranchised, because it would be a novelty. The press was restricted by a fourpenny stamp on each newspaper, and prosecutions were rife against those who indulged in too great freedom of criticism.

The state of foreign affairs was most lamentable. The three great northern Powers, Russia, Austria, and Prussia, succeeding to the Continental despotism of Napoleon without his genius (*impar Congressus Achilli*, as Lord Byron has it) had ordered that no liberty should be allowed, no reform introduced without their sanction.* In this spirit they had suppressed, in 1821 and 1823, the revolutions of Naples, Piedmont, and Spain; thus deceiving and betraying the people of Europe who had fought in 1813 and 1814 for liberty as well as independence. Against those atrocious acts England had protested feebly in 1821, forcibly in 1823,—in both cases fruitlessly.

As the Tory party were in power in 1823, it was natural that the task of innovation should commence on a question upon which Tory precedents would favour the aggressors.

The French Commercial Treaty of 1713 was made by the Tories, and pulled to pieces by the Whigs. The French Commercial Treaty of 1786 was concluded by the Tories, and opposed by the Whigs.

On this side, therefore, Mr. Canning and Mr.

* See Appendix (A).

Huskisson, Mr. Peel and Mr. Robinson, commenced their attacks upon the outworks of the existing system.

The silk manufacture had been bound in the swaddling clothes of the State from the days of its infancy.

Mr. Huskisson took a liberal but at the same time a very temperate course on this subject. Foreign silk manufactures were prohibited; he proposed to admit them after a preparation of two years, with an import duty of thirty per cent.*

The next work taken in hand, but by the Whigs and not by the Government, was the removal of restrictions on religious liberty.

In 1828 the House of Commons consented to repeal the Test and Corporation Acts, which were a relic of intolerance and inflicted an undeserved stigma on Protestant Dissenters. This measure was carried, as I have intimated, against the weight of the Government.

But in the next year the disabilities which at once oppressed and degraded the Roman Catholics of England and Ireland were removed, on the proposition of the Duke of Wellington, Sir Robert

* See Appendix (B).

Peel, and Lord Lyndhurst. From the beginning of the century, Mr. Fox and Mr. Pitt, Mr. Windham and Lord Grenville, Mr. Sheridan and Mr. Canning, Lord Castlereagh and Mr. Grattan had proved in Parliament the justice and the wisdom of admitting Roman Catholics to all the benefits of the Constitution. But until Mr. O'Connell roused the physical force of Ireland to a point of violence which was almost rebellion, no concession could be obtained. In 1829 that which had been contemptuously refused to reason and eloquence, was amply conceded to menaces and masses.

Sir Robert Peel, however, rendered ample justice to the Whigs, while he proposed the measure of which they had been the consistent advocates.

When the debate on the second reading of the Catholic Relief Bill was drawing to a close, and the triumph of the great cause of religious freedom was assured, Sir Robert Peel, at the conclusion of his speech, gave his true, but no less generous testimony to the merits of his forerunners and his opponents. He said, 'One parting word, and I here close. I have received in the speech of my noble friend the Member for Donegal, testimonies of approbation which are grateful to my heart; and they

have been liberally awarded to me by gentlemen on the other side of the House, in a manner which does honour to the forbearance of party among us. They have however, one and all, awarded to me a credit which I do not deserve, for settling this question. The credit belongs to others and not to me. It belongs to Mr. Fox, to Mr. Grattan, to Mr. Plunkett, to the gentlemen opposite, and to an illustrious and right honourable friend of mine who is now no more. By their efforts, in spite of my opposition it has proved victorious.'*

The political party which for sixty years had swayed, with very brief intervals, the destinies of the State; which had led the nation to the American and the French wars; which had resisted all reform and protected all abuse; which had maintained all that was bigoted and persecuted all that was liberal,—broke down under this great failure.

The light now burst in; after the general election the ministry was defeated, and Lord Grey, the new Prime Minister, proclaimed the advent of peace, retrenchment, and reform. On the subject of peace the difficulties of Belgium gave an oppor-

* Parliamentary Debates, new series, vol. xx. p. 1289.

tunity to Lord Grey of acting as a minister on those principles of which he had been the unavailing advocate in opposition.

The questions raised by the Belgian insurrection were complicated; the Northern Powers beheld with some alarm a revolution effected by popular tumult, and the French government had some difficulty in restraining the national wish for annexation.

On the 21st of June, upon the opening of Parliament, the speech from the throne contained the following announcement:—'The discussions which have taken place on the affairs of Belgium have not yet been brought to a conclusion, but the most complete agreement continues to subsist between the Powers whose Plenipotentiaries have been engaged in the Conferences of London. The principle on which these conferences have been conducted has been that of not interfering with the right of the people of Belgium to regulate their internal affairs, and to establish their government according to their own views of what may be most conducive to their future welfare and independence, under the sole condition, sanctioned by the practice of nations, and founded on the principles of public

law, that in the exercise of that undoubted right the security of neighbouring States should not be endangered.'*

The discussions thus declared by the King in June, 1831, to be not yet brought to a conclusion, went on for some years afterwards, but by the firmness, perseverance, and ability of Lord Palmerston were at length terminated, and the acknowledgment and guarantee of all the great Powers established the independence of Belgium.

The work of retrenchment was pursued with vigour, and many useless places were abolished, while the salaries of the most important and efficient officers of the State were considerably reduced.

Soon after Lord Grey had formed his Ministry, Lord Durham asked me to call upon him in Cleveland Row. He informed me that Lord Grey wished him to consult me with respect to the formation of a committee, to draw up the outlines of a plan of Parliamentary Reform. After some deliberation we agreed to propose to Sir James Graham, then First Lord of the Admiralty, and Lord Duncannon, then First Commissioner of Woods and Forests, to form with us a committee for this purpose.

* Hansard's Debates, third series, vol. iv. p. 85.

Lord Durham then asked me to frame, for the consideration of the committee, a sketch of the principal heads of a measure of Reform, to be submitted to Lord Grey, and if approved by him to be proposed to the Cabinet.

Thus invited to propose a plan on a great, important, and difficult subject, I felt bound to reconsider the general principles upon which a sound measure of reform should rest.

On this head I had often recurred to the reflections of Mr. Burke.

'It is this inability to wrestle with difficulty,' says that wonderful man, 'which has obliged the arbitrary assembly of France to commence their schemes of reform with abolition and total destruction. But is it in destroying and pulling down that skill is displayed? Your mob can do this as well, at least, as your assemblies. The shallowest understanding, the rudest hand, is more than equal to the task. . . . The errors and defects of old establishments are visible and palpable. It calls for little ability to point them out, and where absolute power is given, it requires but a word wholly to abolish the vice and the establishment together. . . . At once to preserve and to reform is quite another thing. When the useful

parts of an old establishment are kept, and what is superadded is to be fitted to what is retained, a vigorous mind, steady persevering attention, various powers of comparison and combination, and the resources of an understanding fruitful in expedients, are to be exercised; they are to be exercised in a continued conflict with the combined force of opposite vices, with the obstinacy that rejects all improvement, and the levity which is disgusted with everything of which it is in possession.'*

Lord Grey, the best exponent of the principles of Mr. Fox, and now about to put into practice the advice he had often given in vain, had in his great speech of 1810 expressed these wise and memorable opinions for the consideration of the House of Lords.

'He indeed must either have been prematurely wise, or must have learnt little by experience, who, after a lapse of twenty years, can look upon a subject of this nature in all respects precisely in the same light. Still, after as serious and dispassionate a consideration as he could give to what he believed to be the most important question

* Burke's 'Reflections,' etc.: Works, vol. v. pp. 303–4.

that could employ their Lordships' attention, it was his conscientious opinion that much good would result from the adoption of the salutary principles of Reform, gradually applied to the correction of those existing abuses to which the progress of time must unavoidably have given birth; taking especial care that the measure of Reform should be marked out by the Constitution itself, and in no case exceed its wholesome limits.'

After expressing his admiration for Mr. Fox, 'than whom there never existed one who more fully understood the principles, or more affectionately appreciated the blessings of the venerable institutions under which he lived,' Lord Grey continued, 'Never, my Lords, can I forget his powerful observations when, in his place in Parliament, he stated his conviction of the absolute impossibility of providing for all the variety of human events by any previous speculative plans. For, said he, "I think that if a number of the wisest, ablest, and most virtuous men that ever adorned and improved human life were collected together and seated round a table, to devise *à priori* a constitution for a state,—it is my persuasion that notwithstanding all their ability and virtue, they would not succeed

in adapting a system to the purposes required, but must necessarily leave it to be fitted by great alterations in the practice, and many deviations from the original design." And this opinion he was wont to illustrate by the familiar but apt example of building a house, which, notwithstanding all the study and consideration previously bestowed upon the plan, was never yet known to supply every want, or to provide all the accommodation, which in the subsequent occupation of it were found to be necessary. Nay, he used to remark that however fine to look at a regular paper plan might be, no house was so habitable and so commodious as one which was built from time to time, piecemeal and without any regular design. To those principles of practical reform, so wisely enforced by that great statesman, I am determined to adhere,' etc.

In the same speech Lord Grey referred to a declaration of the 'Association of the Friends of the People,' signed by the Duke of Bedford, then Lord John Russell:—

'We are convinced,' say the framers of that declaration, 'that the people bear a fixed attachment to the happy form of our government, and to

the genuine principles of our constitution. These we cherish as the objects of such affection, not from any implicit reverence or habitual superstition, but as institutions best calculated to produce the happiness of men in civil society; and it is because we are convinced that abuses are undermining and corrupting them that we have associated for the preservation of those principles. We wish to reform the constitution because we wish to preserve it.'*

When, therefore, invited by Lord Grey and Lord Durham to frame a plan to be proposed to Parliament, and perhaps to become the law of the land, it was not my duty to cut the body of our old parent to pieces and to throw it into a Medea's cauldron with the hopes of reviving the strength and vigour of youth. To do so would have been to commit a folly, which I had myself reprobated so long ago as the year 1819. On the 14th December of that year, I had said, 'the principles of the construction of this House are pure and worthy. If we should endeavour to change them altogether, we should commit the folly of the servant in the story of Aladdin, who is deceived by the

* Declaration of the Association of the Friends of the People, May, 12, 1792. 'Hansard's Debates,' vol. xvii. pp. 562, 564.

cry of 'New lamps for old.' Our lamp is covered with dirt and rubbish, but it has a magical power. It has raised up a smiling land, not bestrode with overgrown palaces, but covered with thickset dwellings, every one of which holds a freeman enjoying equal privileges and equal protection with the proudest subject in the land. It has called into life all the busy creations of commercial prosperity. Nor when men were wanting to illustrate and defend their country have such men been deficient. When the fate of the nation depended upon the line of policy they should adopt, there were orators of the highest degree placing in the strongest light the arguments for peace and war. When we were engaged in war, we had warriors ready to gain us laurels on the land, or to wield our thunders on the sea. When again we returned to peace, the questions of internal policy, of education of the poor, and of criminal law, found men ready to devote the most splendid abilities to the welfare of the most indigent class of the community! And, Sir, shall we change an instrument which has produced effects so wonderful, for a burnished and tinsel article of modern manufacture? No! small as the remaining treasure of the

Constitution is, I cannot consent to throw it into the wheel for the chance of obtaining a prize in the lottery of constitutions!'*

With these strong impressions on my mind, I was not likely to deviate from the track of the Constitution into the maze of fancy, or the wilderness of abstract rights.

In 1797, Mr. Grey had proposed to increase the number of county members, and to give four hundred members to districts of town and country, in which every householder should have a vote. Mr. Lambton had, on the 19th of April, 1821, proposed a similar plan.†

I had myself in 1822 gone very largely into the question, and had proposed as a resolution, "That the present state of the representation of the people in Parliament requires the serious consideration of this House."

Mr. Canning, at the end of a long and very brilliant speech in opposition to my motion, had given me reason to expect that in some future year I might succeed. 'I cannot help,' he had said,—

* Parliamentary Debates, vol. xli. p. 1105.

† Hansard's Parliamentary Debates, new series, vol. v. p. 369, and for Plan, see Appendix, in the same volume.

'I cannot help conjuring the noble lord himself to pause before he again presses it upon the country. If however he shall persevere, and if his perseverance shall be successful, and if the results of that success shall be such as I cannot help apprehending, his be the triumph to have precipitated those results; be mine the consolation that to the utmost and the latest of my power I have opposed them.'*

Thus encouraged and thus warned, I neglected neither the encouragement nor the warning.

There were evidently two modes in which reform might be approached. The one was to consider the right of voting as a personal privilege possessed by every man of sound mind, and of years of discretion, as an inherent inalienable right, belonging to him as a member of a free country. According to this theory, the votes of the whole male adult population form the only basis of legitimate government.

Other political writers and eminent statesmen, while of opinion that a free and full representation of the people forms a necessary condition of free government, acknowledge no personal right of

* Parliamentary Debates, new series, vol. vii. p. 136.

voting as inalienable and essential. They consider that the purpose to be attained is good government; the freedom of the people within the State, and their security from without; and that the best mode of attaining these ends is the problem to be solved.

It seemed to me that these last reasoners were in the right. A representation which should produce bad, hasty, passionate, unjust, and ignorant decisions could not conduce to that welfare of the people which is the supreme law. If it be said that no part of the property of the people ought to be levied in taxes by the Government, without the consent expressed or implied of the whole community, it may be answered that a man's life and liberty are as valuable to him as his property; yet no one contends that the judicial body and the jury in criminal trials should be selected by universal suffrage. On the contrary, the greatest care is taken to place on the judicial bench men qualified by learning and experience, and to form the list of the jury out of a portion of the community whose station in life affords some security for their average intelligence, information, and honesty.

The theory of Mr. Mill, that every man ought to have a vote, but a vote weighted according to

a sort of handicap, seems to me visionary in the extreme. I cannot perceive, should it be once admitted in principle that in order to form a free government it is necessary that every man should have a vote, that it is practicable, or possible, to put every man's vote into a balance; to count a merchant or a banker for more voices than a baker or a grocer, and still less, how it is possible to gauge the intellect of labourers or artisans of superior talent or knowledge, and enter them as weighing more than a fundholder or a merchant, a landholder or a great capitalist, whose mind has not been cultivated, or whose talents have never been very bright. For besides the interminable disputes, the never-ending jealousies, the appeal of a wise baker against a foolish banker, the doubt and suspicion thrown upon the integrity of the examiners, who in fact decide the election between the Liberal and Conservative candidate,—is there, after all, any reason to say that a man who knows the higher mathematics, who can calculate compound interest, who is wonderful in his knowledge of geography, is a better elector of a member for the county than the man who goes to market every Saturday, or is at the covert side every Monday

morning? After all, were not the distinctions made by our ancestors, that a man who has a freehold of 40*s.* a year, shall vote for the county, and a man who pays scot and lot shall vote for the borough, and those who have not these qualifications shall not vote,—were not these distinctions much more simple, much less invidious, much more attainable by industry and thrift, and after all quite as philosophical a basis of representation as the metaphysical categories of modern times?*

It seemed to me at least that it would be sufficient to lay down some such conditions as the following, as necessary qualifications for the body of electors.

1. That they should be of average intelligence.

2. That they should, upon the whole, form a security for stability of property.

3. That although bribery cannot be altogether excluded, the body of electors, as a mass, should not be tainted by corruption.

4. That the electoral body should be identified with the general sense of the community—in short with the public opinion of the time.

Such being the objects in view, there were two

* See Appendix (C).

modes by which they were to be sought. One mode would be by the qualification of the franchise; the other by the distribution of the seats.

It appeared to me that the first mode alone would not be sufficient.

In large cities population would outweigh property. In large counties property would outweigh population.

There were required some seats where property could support the claims of an intelligence not popular with the masses, and not rich in land or funds.

In the old system, Mr. Burke, defeated at Bristol, had been returned for Malton; Mr. Fox, nearly overpowered at Westminster, had been returned for Orkney; Mr. Grey, rejected by Northumberland, had found a seat at Appleby. Such a resource, I thought, should not be entirely lost.

It was desirable, in short, as it appeared to me, while sweeping away gross abuses, to avail ourselves, as far as possible, of the existing frame and body of our institutions.

Thus, if the due weight and influence of property could be maintained by preserving the representation of a proportion of the small boroughs with an improved franchise, it was desi-

rable rather to build on the old foundations than to indulge our fancy or our conceit in choosing a new site and erecting on new soil—perhaps on sand—an edifice entirely different from all which had hitherto existed.

At the same time, I was deeply impressed with the conviction of Lord Grey, that none but a large measure would be a safe measure; that to nibble at disfranchisement, and cramp reform by pedantic adherence to existing rights, would be to deceive expectation, to whet appetite, and to bring on that revolution which it was our object to avert.

I endeavoured, therefore, to cut away what was rotten, to preserve what was worth preserving, and to introduce what would strengthen and improve.

I have now before me the plan which I framed in accordance with Lord Durham's desire. It is indorsed on the back in Lord Durham's handwriting—

No. I.

*Lord John Russell's Plan.**

And in my handwriting—

Submitted to Lord Durham, Lord Duncannon, and Sir James Graham.

Dec. 1830. J. R.

* What is here in italics is in the MS. in the handwriting of Lord Durham.

The plan itself, which is written on a sheet of writing-paper, is in the inside. It contains the following heads, with some alterations and erasures in pencil:—

Fifty boroughs of the smallest population, according to the census of 1821, to be disfranchised. *This would disfranchise all Boroughs of 1400 inhabitants.*

II. Fifty more of the least considerable to send in future only one Member to Parliament. *This would apply to Boroughs of 3000 inhabitants.*

III. In all cities and boroughs which preserve the right of sending Members to Parliament, persons qualified to serve on juries to have the right of voting.

IV. In cities and boroughs which preserve the right of sending Members to Parliament, no person to vote except in *the City of London, Westminster*, and *Southwark*, unless he is a householder, rated at £10 a year, has paid his parochial taxes, for three years, within three months after they became due, and has resided

in the city or borough for six months previous to the election.

V. Eighteen large towns to send Members to Parliament. The unrepresented parts of London to send four or six additional Members. Twenty counties to send two additional Members each.

VI. The right of voting in the new towns to be, in householders rated at £$^{10}_{15}$ a ~~year, or in persons qualified to serve on juries.~~

VII. Copyholders and leaseholders having an interest of more than twenty-one years to vote in counties.

VIII. The poll to be taken in hundreds or divisions of counties, but not more than ~~fifteen with the consent of the candidates.~~

IX. In cities and boroughs the poll to finish on the second day.

X. No new right of voting to be acquired in counties by any property of less value than £10 a year.

The first two proposals were agreed to, Lord Durham having first ascertained from the population returns that the first list of fifty would comprehend boroughs under 2000 and not 1400 inhabitants, and the second list of fifty, boroughs under 4000 and not 3000 inhabitants.

These two lists, with some modifications of the data of disfranchisement, formed schedules A and B of the Reform Bill.

A discussion then took place on the right of voting for boroughs. We agreed that it should be uniform, our opinion being that the freemen and the scot-and-lot voters had, in process of time, become generally either dependent or corrupt.

We endeavoured to fix a qualification which should give the right of voting to the greatest number of independent men, and, as far as we could roughly guess, be an equivalent for the old householder right of voting of the seventeenth century. This qualification we fixed by filling up the blank with ten pounds.

This was the same qualification which I had proposed for Leeds, when I introduced, in 1820, a Bill for granting to that town the franchises forfeited by the corrupt and convicted borough of Grampound.

We agreed in subsequent meetings to introduce this right of voting in every town sending Members to Parliament: thus giving to the community (according to the old phrase of our charters) the power which had been long enjoyed by close corporations. This decision opened Bath, Portsmouth, Scarborough, Cambridge, and many other towns, to the inhabitants. We also settled a list of towns to be enfranchised, and of counties to receive additional representatives. Having the assistance of Lord Duncannon for Ireland, of Mr. Cockburn, then the Scotch Solicitor-General, for Scotland, and of Mr. Stanley, now Lord Stanley of Alderley, for the additions to the Welsh boroughs, we attempted to adapt our reform to the state of Ireland, Scotland, and Wales, no less than of England. The task was an arduous one, and in more than one particular we fell into errors of detail. The statistical data, especially, upon which we had relied for the preparation of our list of boroughs to be condemned, were not a sufficient basis for the superstructure we raised upon them. The population tables gave parishes and not towns as their units; and thus while, in some instances, the parish stretched beyond the borough, in others the borough comprised several parishes.

But, with the exception of difficulties thus arising from our inexperience, the plan itself had a marvellous success.

When the proposals were completed, Lord Durham wrote an admirable report upon the plan, which was presented, in the name of the committee, to Lord Grey. The plan, approved by him, was unanimously adopted by the Cabinet, and Lord Grey, carrying it himself to Brighton, explained it fully to the King, by whom it was readily and cheerfully sanctioned. It should be mentioned that, in one of the last days of our sittings, vote by ballot was, against my earnest advice, adopted by the committee. It was, on the recommendation of Lord Grey, omitted by the Cabinet. In talking over the whole matter with Lord Grey, I stated my impression that, if the plan was kept secret till the moment of its being announced to Parliament, its popularity would ensure its success; but that, if prematurely divulged, an adverse vote might stifle the infant in its cradle. In this opinion Lord Grey fully concurred, and so strongly impressed upon his colleagues the necessity of secrecy, that, of more than thirty persons who knew the plan, not one was found indiscreet.

The scene in the House of Commons on the 1st

of March was unexampled. The plan went so far beyond all expectation, that the Whigs wondered whether it could possibly be carried; the Tories concluded that it certainly could not; and the Radicals, with justifiable exultation, felt sure that no temporary defeat could destroy a plan to which the Whig leaders, the friends of Mr. Canning, and the reformers throughout the country, would thereafter be irrevocably pledged. Sir Henry Hardinge, speaking to Sir James Graham in the Lobby, said, 'Well, you are honest fellows; you have acted up to your principles; but I suppose you all go out to-morrow morning!'

The cheers of exultation from some Members on the Opposition side were quite as loud as from any supporters of the Ministers.

Sir Robert Peel had convened some of his chief supporters a few days before, to consider the course to be taken. They acquiesced in his opinion that the introduction of the Bill should not be resisted.

Sir Robert Inglis was the only person present who gave a contrary opinion. As this decision was in itself a great mistake in policy, and in fact rendered all subsequent opposition hopeless, such a course, on the part of so eminent a party leader, may

excite surprise. But it may be thus accounted for. Two years before, Sir R. Peel, wishing to save his country from the risk of civil war, had sacrificed all his prejudices, all his pride, and the confidence of his party, to be that 'daring pilot in extremity' who should place his country in harbour, at any loss of power or fame for himself. But the immolation had been painful in the extreme. Some time afterwards, meeting Sir Thomas Frankland Lewis in an inn in Wales, Sir Frankland started the subject of the Reform Bill, and said that he wondered that such a statesman as his companion had not saved the country from the wild revolutionary measure of the Ministers, and introduced a safe and moderate Reform Bill of his own. Sir Robert answered, in substance, that nothing would induce him to do again what he had done on the Catholic question.* He had himself quoted, in those debates, the lines of Dryden:—

> 'Tis quickly said, but, oh! how hardly tried
> By haughty souls to human honour tied,
> The sharp convulsive pangs of agonizing pride!'

To this excited feeling of disappointment and disgust is, I think, to be attributed the unwillingness

* From Sir T. Frankland Lewis.

of the great leader of the Tory party to incur the responsibilities of office, and undertake the conduct of a Reform Bill. In the meantime, the seven days of debate on the introduction of the Bill gave time for the flame of enthusiasm to rise, and not time for it to abate. A second blunder of the Tory party bestowed upon them a majority, and gave Lord Grey an opportunity, of which he instantly availed himself, of advising the King to dissolve Parliament. The triumph of the Reformers, so long a defeated minority, was signal and general; for, of eighty Members for the forty counties of England, seventy-six were returned pledged to support the Reform Bill of Lord Grey.

It would take too much space to relate the vicissitudes of the Reform Bill. It was carried in the House of Commons mainly by the entire confidence felt in the integrity and sound judgment of Lord Althorp. 'Sir,' he said, replying to a very acute and ingenious speech, 'the hon. and learned gentleman's arguments are very plausible. I do not recollect the reasons which prove his objections to be groundless, but I know that those reasons were perfectly satisfactory to my own mind.' And the House voted, by a great majority, against the plau-

sible arguments, and in favour of the unknown replies. Lord Althorp, as leader of the House, determined that the Reform Bill should not be brought forward for discussion unless either he or I were present. He took for his special task the frame and wording of the clauses, which he prepared with the assistance of the law officers and the Reform lawyers, in the House of Commons, while I took the division of counties, and the boundaries of boroughs, with Lord Hatherton and Admiral Beaufort, acting as commissioners, appointed for the purpose.

Many were the difficulties of ascertaining the true boundaries of existing boroughs, and of fixing the new limits of the boroughs to be preserved or created.

Happily, with the aid of the two I have named, and with reports from assistant-commissioners, these difficulties were fairly and impartially surmounted, and the Bill passed the House of Commons.

In the House of Lords the obstinate resistance of the majority, marshalled under the authority of the Duke of Wellington, and guided by the powerful ability of Lord Lyndhurst, was at length overcome by the perspicuous wisdom and consistent

integrity of Lord Grey, supported by the wonderful eloquence and vigour of Lord Brougham, and borne along to triumph by the invincible energy and enthusiasm of the people. The recollection of the struggle of May, 1832, will never pass from the memory of those who bore a part in that great but bloodless Revolution.

The Reform Bill thus became an Act of Parliament. For upwards of thirty years it has been part and parcel of the Constitution of these Realms —for thirty years the Constitution has been more loved and respected than it ever was before—for thirty years the success of measures approved after free and general discussion has been no longer obstructed by the nominees of individuals, or by representatives who purchased seats for corrupt boroughs in order to protect monopoly, maintain colonial slavery, and reject the claims of civil and religious freedom.

Having had such an experience of the reformed Parliament, we can tell how far it has in its working answered the expectations and fulfilled the purposes of its authors. Lord Grey had expressed these purposes in the clear and constitutional language which was habitual to him when he advised

the King in June, 1831, to use these terms in his speech on the opening of Parliament:—

'I have availed myself of the earliest opportunity of resorting to your advice and assistance after the dissolution of the late Parliament. Having had recourse to that measure for the purpose of ascertaining the sense of my people on the expediency of a reform in the representation, I have now to recommend that important question to your earliest and most attentive consideration, confident that in any measures which you may prepare for its adjustment, you will carefully adhere to the acknowledged principles of the Constitution, by which the prerogatives of the Crown, the authority of both Houses of Parliament, and the rights and liberties of the people are equally secured.'*

It cannot be denied that under the operation of the Reform Act, the prerogatives of the Crown, in spite of many sinister prophecies to the contrary, have been secure.

As little can it be affirmed that the authority of the House of Lords has been infringed or menaced. Notwithstanding Mr. Canning's alarming predictions, supported by his quotation from Mr.

* Hansard's Debates, third series, vol. 4.

Fox, implying that if the House of Lords did not please the House of Commons, they would be overthrown by that democratic body, in its reformed shape, the authority of the House of Lords has been 'cherished and protected' by the House of Commons.

But the functions of the House of Commons have, since the days of Walpole, been far more important than those of the House of Lords.

It is theirs to guard the rights and liberties of the people. It is theirs to protect every subject of the realm in the enjoyment of his property and his rights. It is theirs to point out to the Crown, by extending their confidence to one party and refusing it to another, by giving it to certain men and refusing it to certain other men, which is the party, and who are the statesmen qualified to govern this mighty empire, to administer its laws, to preserve its honour in the face of other nations, to advise the Crown in matters of peace and war, to maintain the character of the nation unsullied, and its station neither impaired by timidity, nor imperilled by rashness.

It is obvious that a House of Commons, fully competent to guard the rights and liberties of the

people, and to secure them against any unlawful or unjust invasion of property, may be unfit to fulfil the third function which the Constitution has assigned to them.

It is manifest that the reformed House of Commons have adequately performed the first and second of these duties; have they been competent to the third?

To this I might answer in general terms that it must be admitted that whether the Liberal or the Conservative party were in power, men fitted for the task have been at the disposal of the Crown and of the nation, in the various departments of Government.

If we go more into detail, we shall find that changes such as those which were common to the old Parliament have not been unknown to it in its reformed shape. In the old state of representation Mr. Burke, Mr. Grey, and Sir Robert Peel were ejected from the city of Bristol, the county of Northumberland, and the University of Oxford, for the liberality and breadth of their views of public policy. They were returned for Malton, for Appleby, and for Westbury.

Similar changes have taken place in the Re-

formed Parliament. Tiverton, Stroud, Morpeth, Durham, Midhurst, Stamford, Droitwich, Richmond, and other boroughs of small comparative population have returned Members fit to advise the Crown, and guide the House of Commons by their aptitude for public affairs.

But may there not still be improvements? Each of the last four ministries have been willing to add, as it were, a supplement to the Reform Act. For my part, I should be glad to see the sound morals and clear intelligence of the best of the working-classes more fully represented. They are kept out of the franchise which ministers of the Crown have repeatedly asked for them, partly by the jealousy of the present holders of the suffrage, and partly by a vague fear that by their greater numbers they will swallow up all other classes. Both those obstacles may be removed by a judicious modification of the proposed suffrage, and by a happy sense on the part of the public that an addition of the votes of the most intelligent of the working classes to the constituent body, will form a security and not a danger.

When the question can be fairly entertained, I trust the suffrage will be extended on good old

English principles, and in conformity with good old English notions of representation.

I should be sorry to see the dangers of universal suffrage and of unlimited democracy averted, or sought to be averted, by such invidious schemes as granting to the rich a plurality of votes, or by contrivances altogether unknown to our habits, such as the plan of Mr. Hare, though sanctioned by the high authority of so profound a thinker as Mr. Mill.

If there were to be any deviation from our customary habits and rooted ideas on the subject of representation, I should like to see such a change as I once proposed, in order to obtain representatives of the minority in large and populous counties and towns. If when three Members are to be chosen, an elector were allowed to give two votes to one candidate, we might have a Liberal country gentleman sitting for Buckinghamshire, and a Conservative manufacturer for Manchester. The local majority would have two to one in the House of Commons, and the minority would not feel itself disfranchised and degraded.

Yet even this change would be difficult to introduce, and would perhaps be unpalatable in its first working.

We are a people who love our free institutions, not only because they are good, but also because they are old. When our ancestors banished James II. and changed the whole practice of the Constitution, they took care to assert that he had abdicated the throne, and to display the precedent of Richard II. as the justification of their conduct.

Institutions, it is true, do not grow like a tree; they are the work of man's hands, and are not fit subjects of our idolatry. Yet there is something venerable in old privileges; in rights that have been claimed by Hampden; in liberties that have been vindicated by Somers. Mechanical inventions and physical discoveries have no assignable limits, but it is difficult to believe in this age of the world that there are models of government, still untried, promising a cup of felicity and of freedom which England has not yet tasted.

The limit appears to me to have been rightly laid down by Lord Grey. That which tends to increase the security of the prerogatives of the Crown, the authority of both Houses of Parliament, and the rights and liberties of the people, may well be accepted; the plan which has other objects, and looks to a different form of Government, ought at once to be rejected.

Let it not be forgotten, that the intolerance of a despotism and of a democracy are alike unknown in the temperate zone of our ancient form of government; that the liberty to think as we please, and speak as we think, which was a rare felicity in the time of the Roman Empire, is the common, vulgar, and general happiness enjoyed under a British Sovereign; that the freedom of thought, of invention, of discovery, of writing and of publishing, which is a pledge for the progress of our people in science, in religion, and in morals, is also the best security for our political liberties.

This general diffusion of opinion fills up many a void in the form of our institutions.

But I am not without apprehension on a different score. There appears to me a danger more pressing and more insidious than that of universal suffrage and democracy.

This danger is that with a view of satisfying the demands of those who require an extension of the suffrage some apparent concession may be made, accompanied by drawbacks, or securities, as they will be called, inserted with a view to please the large Conservative party in the two Houses of Parliament. This is no imaginary danger; Lord

Althorp in vain warned the members of his own party against granting to £50 tenants at will the same right of voting in counties as had been hitherto enjoyed by independent forty-shilling freeholders. The sound of extension of franchise tickled the ears of the Reformers; the Chandos clause was carried, and, as Lord Althorp predicted, the county representation has been weighed down by the influence of the great landowners.

At the very moment of carrying the Reform Bill, Lord Grey was beset by the section called the Waverers, who endeavoured to induce him still further to degrade the county electoral body, by transferring to the boroughs the forty-shilling freeholders in towns and boroughs.

By a similar provision, coupled with a power of sending votes by the post, the last Conservative Reform Bill would have created thirty or forty nomination boroughs, and this perhaps in a way unperceived by the professed authors of the Bill.

In fact the subject is full of unknown pitfalls, and it is far better for the great Liberal party in the country to consent to no candid compromise, to place no weights in the scale against democracy, to

trust to no nice tricks of statemanship, no subtle inventions of ingenious theorists, than to be parties to a plausible scheme, which, under the guise of an improvement of the Reform Act of Lord Grey, might sweep away half its fruits, and give a worthless husk in exchange.

"Maximus novator tempus."

Let them rather trust to the greatest of innovators, TIME.

The fund of popularity with which the Reform Act enriched the Ministry made it incumbent on them to risk that popularity in striking down abuses, which were strong in interests and prescription.

Among these there was no perversion of law so injurious to the welfare, or so threatening to the future peace of the community, as the abusive administration of the Poor Law. During the most critical period of the French war, a practice had arisen in the south of England of paying out of the poor-rates a portion of the wages of labour,—that portion to be measured by the number of the labourer's family. Hence the parents became the stipendiaries of the State, and their income was

measured, not by their industry as labourers, but by the number of their children. In this way, the sons became the useless and superfluous members of a community which had increased, not according to natural laws, but according to artificial contrivance.

In 1830, the evils arising from these mistakes of ignorance and want of foresight had arisen to the most alarming height. For some winters, young men of eighteen and twenty had been put to nominal work as an excuse for giving them a scanty and eleemosynary pay. Their days were spent in idleness; their nights in poaching, thieving, drinking and excess. Their disorder grew to outrage and riot; the sky was reddened by nocturnal fires; the fields were the scenes of combat, and the farmers appeared as yeomanry cavalry to suppress the insurrections of their labourers.

It was the determination of Lord Althorp, the Duke of Richmond, and the other members of Lord Grey's Cabinet, to grapple with this frightful evil. Mr. Senior, Archbishop Whately, and others, had, on the grounds of science and political economy, proved the destructive nature of the abuses which prevailed. A Commission was named, a remedy

was recommended, a Bill was framed, considered, and approved by a committee of the Cabinet, of which Lord Melbourne, Lord Althorp, the Duke of Richmond, Lord Ripon, and I were members.

Thus was framed the Poor Law Amendment Act. It was introduced into the House of Commons by Lord Althorp, and such was the difficulty of the task, that nothing but his perseverance, patience, and thorough knowledge of the subject would ever have carried it against the prejudices, the ignorance, and the deeply-seated interests with which he had to contend.

Another task of equal urgency was to restore tranquillity to Ireland, and suppress the agrarian disturbers of that part of the kingdom. In the year 1833, a severe but temporary measure was passed for that purpose. At the same time, the Irish Church was reformed, the number of bishops reduced, and the Establishment rendered more efficient.

In the same year, slavery in our colonies was abolished, twenty millions being voted as compensation to the proprietors of slaves,—a sum generous as a gift, but inadequate as an indemnity. Still, the erasure of such a blot on our civil policy, and the

grant of freedom to 800,000 human beings, was an act of which the Reformed Parliament might justly be proud. The present Lord Derby was the mover on the part of the Government in these measures, and raised his fame as a legislator and an orator by surpassing energy and eloquence in debate.

In 1835, the municipal corporations of England, Scotland, and Ireland were reformed, and those bodies, often the seats of monopoly and the hotbeds of corruption, were subjected to vigilant popular control.

A year or two afterwards, Sir Robert Peel declared that this reform had proved, as he expected, a conservative measure. Indeed, it may be said that every measure which effaces a blot in our institutions, which deprives popular discontent of a topic of just complaint, and remedies an obvious and offensive grievance, tends to confirm the attachment of the people to their government, and is thus a conservative measure.

'There are,' said Lord Palmerston, in his great speech of 1850, 'revolutionists of two kinds in the world. In the first place, there are those violent, hot-headed, and unthinking men, who fly to arms,

who overthrow established governments, and who recklessly, without regard to consequences, and without measuring difficulties and comparing strength, deluge their country with blood, and draw down the greatest calamities on their fellow-countrymen. These are the revolutionists of one class. But there are revolutionists of another kind,—blind-minded men who, animated by antiquated prejudices, and daunted by ignorant apprehensions, dam up the current of human improvement, until the irresistible pressure of accumulated discontent breaks down the opposing barriers, and overthrows and levels to the earth those very institutions which a timely application of renovating means would have rendered strong and lasting.'* Such were the renovating means which, applied between 1830 and 1850, have restored to our institutions a strength which was about to decay.

In the same year, 1835, the commutation of tithes for a fixed rent-charge—a measure which Mr. Pitt had meditated in vain—was successfully carried. At first, the country gentlemen in the House of Commons were inclined to think the Bill proposed

* Debate on Foreign Policy, June 25, 1850. Hansard, vol. cxii. p. 432.

too favourable to the Church, but, with some modifications, restricting the amount of charge, the commutation was accepted by all parties. In three years, or little more, the whole arrangement was carried into effect, and, from this time, the clergyman has no longer been exposed to harassing conflicts with his parishioners, and the farmer has no longer been compelled to share with the tithe-owner the profits of improvements, of which he and the landowner bear all the expense. Thus, works of drainage, and the cultivation of waste lands, which, under the former state of things, were not undertaken because unremunerative, became practicable, and have, to the great advantage of the country, been carried into effect.

Similar changes have since been commenced on the subject of church leases, thus giving a security to capital and industry, while the Church received an equitable compensation.

Another work of improvement, begun by Sir Samuel Romilly and Sir James Mackintosh, and promoted, during his tenure of office, by Sir Robert Peel, was greatly advanced at this time. I allude to the reform of the criminal law. When Sir Samuel Romilly first raised the voice of enlight-

ened humanity on this subject, it was declared by the great sages of the law that, unless a man were subject to be hanged for stealing to the amount of 40*s.* in a dwelling-house, no person would be safe in his home.

On the 21st of May, 1823, Sir James Mackintosh proposed by resolutions a great reform of the Criminal Law.

He proposed that the punishment of death should be taken away in the cases of larceny from dwelling-houses, from shops, and on navigable rivers; from the greater part of the offences made capital by the Black Act, and all the offences made capital by the Marriage Act; from horse-stealing, sheep-stealing, and cattle-stealing: from forgery and uttering forged instruments; sending threatening letters, and various other cases.

He was opposed by Sir Robert Peel, who, while he agreed to abolish the punishment of death for several offences for which it was scarcely ever put in force, could not agree to part with the security that punishment afforded in cases of larceny to the amount of 40*s.* in a dwelling-house.

On a division, the previous question was carried by 86 to 76. Sir Robert Peel, however, intro-

duced several valuable amendments in the Criminal Law.

In the year 1832, capital punishment was abolished for horse-stealing, sheep-stealing, larceny to the value of £5 in a dwelling-house, coining, and forgery, except of wills and powers of attorney to transfer stock.

In the year 1833, for house-breaking.

In 1834, for returning from transportation.

In 1835, for sacrilege and letter-stealing by servants of the Post Office.

In 1837, upon the Queen's accession, the offences subject to capital punishment were virtually reduced to the following:—

Murder and attempts to murder; burglary with violence to person; robbery with cutting or wounding; arson of dwelling-houses, persons being therein; rape, with some few offences of rare occurrence.

In 1841, capital punishment was further abolished for rape, embezzlement, and riot.

In 1861, for all offences except murder and high treason. The practical effect of these changes has been the following diminution in the number of persons sentenced to death, and of those actually executed:—

	Sentenced to Death.	Executed.
1823	968	54
1824	1066	49
1825	1036	50
1833	931	33
1834	480	34
1835	523	34
1837	438	8
1838	116	6
1839	56	11
1843	97	13
1844	57	16
1845	49	12
1853	55	8
1854	49	5
1855	56	7
1860	48	12
1861	50	15
1862	29	15

In taking the average of decennial periods we find—

	Sentenced to Death.	Executed.
1823 to 1832	1279·5	56·3
1833 „ 1842	325·2	17·1
1843 „ 1852	61·6	10·7
1852 „ 1862	50·9	11·1

Taking the proportions to the population, the diminution is still more striking.

	Sentenced to Death, One in	Executed, One in
1823 to 1832	10·123	229·177
1833 „ 1842	45·831	813·185
1843 „ 1852	274·692	1,581·390
1853 „ 1862	373·220	1,711·434

The first set of numbers in these tables show the great changes which have taken place in the law when the number of capital sentences have descended from 1279 to 51, or from 1 in 10,123 in the population to 1 in 373,220. The second set of numbers shows the changes in the application of the law from 56 to 11, or from 1 in 229,000 of the population to 1 in 1,711,000. The great diminution in the number of executions evidently took place at the accession of the present Queen.*

But if these changes show the increased humanity of our people, under our very imperfect system of secondary punishment, it may well bear a question whether murder is prevented by retaining the punishment of death for eight, ten, or fifteen persons in a year.

For my own part, I do not doubt for a moment either the right of a community to inflict the punish-

* See Appendix (D).

ment of death, or the expediency of exercising that right in certain states of society.

But when I turn from that abstract right, and that abstract expediency, to our own state of society,—when I consider how difficult it is for any judge to separate the case which requires inflexible justice, from that which admits the force of mitigating circumstances,—how invidious the task of the Secretary of State in dispensing the mercy of the Crown,—how critical the comments made by the public,—how soon the object of general horror becomes the theme of sympathy and pity,—how narrow and how limited the example given by this condign and awful punishment,—how brutal the scene of the execution,—I come to the conclusion that nothing would be lost to justice, nothing lost in the preservation of innocent life, if the punishment of death were altogether abolished.

In that case, a sentence of a long term of separate confinement, followed by another long term of hard labour and hard fare, would cease to be considered as an extension of mercy.

If the sentence of the judge were to that effect, there would scarcely ever be a petition for remission of punishment, in cases of murder, sent to the

Home Office. The guilty, unpitied, would have time and opportunity to turn repentant to the Throne of Mercy.

In the year 1837 a mighty question in regard to the government of Canada was brought before Parliament.

In 1791 Mr. Pitt and Lord Grenville had given to that province an impracticable Constitution. The province was inhabited by Frenchmen of the age of Louis XIV., with no taint of the Revolution, and no mark of improvement. It should have been the task of the English Government to infuse into the province English freedom, English industry, and English loyalty.

Instead of that sensible course, it was the object of Mr. Pitt and Lord Grenville to separate English energy from French inertness; to shut up the industry of the English in the upper part of the colony, and to preserve the lower province as a sort of museum, where a French *noblesse*, with feudal titles and orders of knighthood, and tithes and seignorial rights, might be preserved for ever as a memorial of the happiness of France before her jacobin Revolution.

But 'fancy's fairy frostwork' melted away before

the light of human progress. The titles and orders projected never were created; all fell into confusion; a legislative Council, formed of enlightened men, attached to British connection, monopolized all the patronage of the Crown, and became odious to the French popular party. The representative assembly of Lower Canada refused supplies.

Lord Bathurst, Colonial Secretary, having in his possession a clock that would not go, took the machine into his own hands. He voted by his own authority the supplies to the Crown, which the Assembly refused to vote.

But this policy could not last many years. Parliament, on the advice of ministers, rejected the proposals of the French Canadians for a Legislative Council of their own nomination. The consequences quickly followed. Lower Canada, pent up in feudalism, rebelled for privileges and tithes; Upper Canada, pent up in democracy, rebelled for a republic.

Lord Durham was sent out by Lord Melbourne's Government to solve this mysterious problem. He examined it with the eye of a statesman; penetrated the views of the various discordant parties, and pronounced for Union. The moment was a

critical one. Some said, 'Let the French Canadians have their way, or you will have a repetition of the American war.' Others said, 'The grant of what is called "responsible government" is a grant of independence. It must be resisted.'

Between these two extreme courses the British Government took their stand. They came to an understanding with the representatives of the Canadian Liberals, that under the term 'responsible government' should be included all questions of internal but none of external policy. Responsible government, thus defined, was granted.

Mr. Powlett Thomson, sent out as Governor to effect the Union, put to himself the question, 'Am I the sovereign, or am I the minister?' and he solved it by determining that he was the minister.

Doubtless the machinery of Colonial Government, with the internal affairs left to the guidance of the Colonial Ministry, and the external affairs, with the naval and military departments, placed under the control of the Queen's Government, became exceedingly complicated—more complicated even than the British Constitution itself. But with goodwill and good sense nothing is impossible; revolt and disaffection were the results of the Act of

1791 ; obedience and loyalty have been the results of the Act of 1837.

There was indeed one inevitable but not irremediable defect in the Act of Union. Lord Sydenham could not have obtained a majority in its favour unless he had agreed that the number of representatives of the Lower Province should be equal to that of the Upper. But it was obvious that if the population of the Upper Province should, by the breaking down of the barrier between it and England, and by its natural fertility and richness greatly increase beyond that of the Lower, justice and policy would alike require some change of the equality built upon a shifting soil. This is what has now happened. It will task the wisdom of Parliament to fix the foundations of the new building, but the omens are favourable.

Many subjects of great importance occupied at this time the attention of Parliament.

Ireland had been treated in 1829 as Mr. Pitt had proposed she should be treated in 1800. But this long denial of justice had produced discontent and disaffection; had caused rural outrages of the most atrocious character; had left the country a

prey to tyranny on the part of the landlords, plots and conspiracies on the part of the priests and the peasantry. Lord Anglesey, when Lord Lieutenant, had said that the King had no party in Ireland but the King's troops.

The Governments of Lord Melbourne and his successors did much to remedy what could only be remedied by time and justice. The tithe question was settled, and the burden, removed from the peasantry, was placed upon the landlords. A poor-law, which is in fact not so much a law of charity as a law of public order, was carried. An Encumbered Estate Act, introduced in 1847, and afterwards amended by Sir John Romilly, opened the way to improved relations of landlord and tenant. The right of voting in counties, taken away from the serfs called forty-shilling freeholders in 1829, was given to occupiers rated at £12 a year. A sum of eight millions sterling was distributed by the Imperial Government during the potato famine of 1848.

The measure introduced in 1835, granting a portion of the Church Revenues of Ireland to purposes of Education, was unpopular in England, and was not carried in the House of Lords. But

it is hardly possible that a Church Establishment should be preserved undiminished for about one-ninth of the population of Ireland. When England shall examine this question dispassionately, it may be expected that, although the State will not entangle itself with the support of a Roman Catholic clergy, as Mr. Pitt projected, the whole people of Ireland will be allowed to derive some benefit from so large a revenue. National Education and Public Improvements of various kinds might receive at least a portion of the revenue raised from the land for the benefit of the people.

In 1828 and 1829, Parliament had thrown open the doors of office and of the Legislature to Protestant and Roman Catholic Dissenters from the Established Church.

From 1831 to 1841, ten years had been devoted to the grant of political and municipal privileges in the three kingdoms.

In 1840, the period had arrived for reducing duties of customs, abolishing monopoly, and freeing commerce from many restrictions.

The two Humes, Mr. Joseph Hume, the Member of Parliament, and Mr. Deacon Hume, an officer of the Board of Customs, opened the road along which

the free-trade army marched first in doubtful battle, but ultimately in assured triumph.

Mr. Charles Villiers, Mr. Cobden, and Mr. Bright moved the total and immediate repeal of the Corn Laws. The Whig Ministry, without going this length, proposed that the sliding scale of duties on wheat should be exchanged for eight shillings fixed duty; that the prohibition of foreign sugar should be reduced to a differential duty of twelve shillings a hundredweight, and the protective duty on timber, instead of ten shillings on colonial, and fifty-five shillings on Baltic timber, should be twenty shillings on colonial and fifty shillings on Baltic timber. But the proposal for the admission of foreign sugar was rejected by a Protectionist majority of thirty-six, and, on a dissolution, a majority of ninety-one seated Sir Robert Peel as the head of a new administration.

But if the Protectionists counted on Sir Robert Peel to confirm the reign of monopoly, they were wofully deceived. It is true that, with characteristic prudence, he left for a time unassailed the corn of the landed gentry and the sugar of the West Indian colonies. But he struck down all the minor monopolies, and advancing like a great

general, left the fortresses of corn and sugar held by mere garrisons in a conquered country.

Thus it happened that, in 1846, the introduction of foreign corn was sanctioned with a duty, not of eight shillings, but of one shilling, and Sir Robert Peel, amid the curses of his party, but the applause of the people, conferred an inestimable benefit on his country.

On this occasion, as on that of the Catholic Relief Bill, Sir Robert Peel was the first to give credit to those by whom he had long been opposed.

'I said before, and I said truly,' he declared, 'that in proposing our measures of commercial policy I had no wish to rob others of the credit justly due to them. I must say, with reference to honourable gentlemen opposite, as I say with reference to ourselves, that neither of us is the party which is justly entitled to the credit of them. There has been a combination of parties generally opposed to each other, and that combination and the influence of Government have led to their ultimate success; but the name which ought to be associated with the success of these measures is not the name of the noble Lord, the organ of the party of which he is the leader, nor is it mine. The name which ought

to be, and will be associated with the success of those measures is the name of one who, acting, I believe, from pure and disinterested motives, has, with untiring energy, made appeals to our reason, and has enforced those appeals with an eloquence the more to be admired because it was unaffected and unadorned; the name which ought to be chiefly associated with the success of these measures is the name of RICHARD COBDEN.' *

This just tribute did the highest honour to the fairness and magnanimous candour of the statesman who uttered it.

In the same year, 1846, the Ministry which succeeded him swept away the differential duties on sugar, and reduced those duties in a manner which will be presently explained.

In 1848, the Navigation Laws were repealed, and on that occasion Sir James Graham, in a memorable speech, recorded the benefits of the repeal of the corn laws, and celebrated the triumphs of free trade.

Some of the fruits of this signal change of policy, partly sanctioned by the very Parliament which had been elected to defend the Corn Laws and to guarantee the gains of protection, and partly

* Parliamentary Debates, third series, vol. lxxxvii. p. 1054.

carried into effect by the succeeding Parliament, remain to be recorded.

But other beneficial reforms must be added to the glorious catalogue.

In 1861, a Treaty of Commerce with France broke the fetters which restrained our intercourse with a country abounding in wine, in oil, in silk, and beautiful fabrics, but deficient in coal, in iron, and in cheap manufactures.

In this task, the Emperor of the French and the British Cabinet were the original proposers of the Treaty, but Richard Cobden was the chief worker in carrying the design into effect.

Nor was the measure merely one of free trade. Two nations, the foremost in the world for intellect, for triumphs in peace, and for triumphs in war, were thereby connected by a thousand links which may, it is to be hoped, convert a relation of ancient hostility into one of friendly and peaceful rivalry.

The results of these free-trade and financial measures remain to be noticed.

Let us first take the official value of the imports and exports of British, Colonial, and Foreign goods in 1842, 1853, and 1863,—in short, the whole extent of our commerce:—

Imports—	1842	£65,253,286
„	1853	123,099,313
„	1863	171,913,852
Exports—	1842	£113,841,802
„	1853	242,072,224
„	1863	313,113,188

Next, the real value of Exports of British and Irish manufacture:—

1842	£47,381,023
1853	98,933,781
1863	146,489,768

The real value of some few of the more important articles of British manufacture may next be recorded:—

	1842.	1853.	1863.
	£.	£.	£.
Cotton Goods . . .	13,907,884	25,817,249	39,424,010
Earthenware and porcelain	555,430	1,338,370	1,334,275
Hardware and Cutlery	1,398,487	3,665,051	3,826,784
Linen manufactures .	2,346,749	4,758,432	6,509,970
Machinery	554,653	1,985,536	4,365,023
Iron and Steel . . .	2,457,717	10,845,422	13,111,477
Woollen Yarn . . .	627,305	1,456,786	5,065,432
Woollen manufactures	5,185,045	10,172,182	15,518,842
Silk thrown and manufactured	590,189	2,044,361	2,229,591

It will be recollected that, in 1823, Mr. Huskisson contended, amid a storm of obloquy, that silk manufacturers could, after due time for preparation, withstand a competition protected by a duty of only 30 per cent.; that, in 1845, Sir Robert Peel reduced the protection to ten per cent., and that, in 1861, Mr. Gladstone took it away altogether.

Yet, in 1823, the declared value of the total of British silk goods exported amounted to £351,409; and, in 1863, the silk thrown and manufactured amounted in value to £2,229,000.

Let us take two further articles, sugar and ships. In 1841, I had proposed to reduce the duties on colonial and foreign sugar to 24*s.* and 36*s.* respectively, thus giving colonial sugar a protection of 12*s.* a cwt. This was rejected as insufficient. In 1846 I proposed a duty of 14*s.* a cwt. on Muscovado sugar of the British colonies, and, instead of the prohibitory duty of 63*s.* on foreign sugars, a duty on foreign Muscovado sugar of 21*s.*; and that, from July, 1851, a duty of 14*s.* should be applied alike to all Muscovado sugars, taking away protection altogether. This was approved. The consumption of raw sugar has been, in spite of a subsequent increase of duty during the Russian war, which lasted till 1863,—

Cwt.	Cwt.	Cwt.
1842.	1853.	1863.
3,868,437	7,272,833	9,202,524

In 1841, the consumption of sugar was 17 lb. a head; in 1853, it was 26¾ lb. a head; in 1863, it was 35¾ lb. a head. Such were the blessings conferred by a relief from taxation, which enabled the people to consume an article of wholesome food, free from high and prohibitive duties.*

In 1848, Mr. Labouchere, as the organ of the Government, carried the repeal of the Navigation Laws—a measure at which the shipowners stood aghast, and at which even Adam Smith had hesitated. The consequence has been, in regard to British tonnage, the number of tons was as follows—

1842.	1853.	1863.
5,415,821	9,064,705	15,263,047
Foreign.	Foreign.	Foreign.
1,930,983	6,316,456	7,762,116

In regard to the coasting trade, which was thrown

* Hansard's Debates, vol. lxxxvii. p. 1319. See also vol. lxxxviii. pp. 250, 251.

open to foreign shipping in 1854, the increase has been—

	British.	
1842.	1853.	1863.
10,785,450	12,820,745	17,465,635
	Foreign.	
—	—	81,897

So much do the strengthening breezes of freedom prove better nurses of hardy offspring than the confined atmosphere of monopoly and restriction.

Let us now turn for a few moments to our financial changes.

More than a century ago, after the Seven Years' War, historians and philosophers pointed out that we had heavy taxes on salt, on candles, on leather, and on soap; on coals carried by sea; on every article of manufacture which was not prohibited; on malt, beer, glass, paper, newspapers. The land-tax amounted to 3*s.* in the pound. They inferred that the debt would break our backs.*

Yet, after more costly and more burthensome wars than we had ever before sustained, the taxes on necessaries have been taken off, the taxes on glass and paper, and most of the taxes of excise

* See especially Sinclair's History of the Revenue, with the Appendix.

have been abolished, and the land-tax remaining fixed, while the rent of land has greatly increased, has been lightened.

In the meantime, the wealth of the country has so much augmented, that the income-tax of 2*s.* in the pound, which only produced 15 millions in 1815, would have produced 26 millions in 1864.

If it be said that Ireland is now subject to the tax, it must be reckoned on the other hand, that the currency of 1815 was depreciated 25 per cent., while that of 1865 is equal in value to gold.

There are two ways, however, in which it is usual to give an exaggerated view of our expenditure and of our taxation. Of our expenditure, by lumping, as a proof of our extravagance, the taxes applied to pay the interest of our national debt; the expense of paying the judicial and police establishments of the country; the civil list; and the half-pay and pensions due to the officers, soldiers, and sailors of our army and navy.

No one proposes to diminish the vast sums payable under these heads by a single shilling, but they are made to figure among the totals of our expenditure, and pass muster as proofs of our national waste, extravagance, and profusion.

The other way is that of exaggerating the burthen of taxes by taking, not the rate of the tax, but the sum paid. Thus, if 24*s.* a cwt. is charged on sugar, and that rate is reduced to 12*s.*, it is clear that the burthen on the people is greatly reduced. But if the quantity consumed under the high duty is under four millions of hundredweights, and under the low duty is above nine millions, it is clear the sum paid from this source will be increased, and a pretence is obtained for saying the burthens of the subject are augmented.

Thus, if a shilling income-tax produced $7\frac{1}{2}$ millions of revenue in 1815, and a sixpence income-tax, in 1865, were to produce 8 millions, it would be said that the burthen on the people had been increased.

What is really to be ascertained is, how much a man is taxed in proportion to his means; a tax of a million in a poor country may be more oppressive than a tax of five millions on a population of equal numbers in a kingdom *ingeniis opibusque et festâ pace virentem.*

On the subject of foreign politics much obscurity prevails in the minds of men as to the principles by which British policy has been guided in

the past, and will be guided in the future. Much of this obscurity arises from the double sense which is attached to the term intervention. The usual and more proper meaning of the term intervention is interference in the internal affairs of other nations. The new and less accurate application of the term is to all interference in the disputes of independent nations. The former is the sense in which intervention took place by Austria, Prussia, and Russia in the internal affairs of Piedmont and of Naples in the year 1821, and by France and the Northern Powers, in the internal affairs of Spain, in the year 1823. The incorrect use of the term is, when it is applied to the interference prompted by Mr. Canning, in the year 1826, when England interposed, as she was bound by treaty to do, in defence of the independence of Portugal.

It is obvious that great confusion would arise from using the same term, and applying the same argument to the two kinds of interference.

All public writers have declared that a nation has the right to settle its own form of government, provided it does not injure other nations in its mode of doing so; just as every householder may regulate

his own house, provided he does not cause a nuisance to the neighbourhood.

But if one nation attacks another, all nations are at liberty to judge whether their interests, and the general independence, are affected thereby.

Thus, the first kind of intervention should, as a rule, be forbidden and avoided. Of late years, we have seen that intervention in the internal affairs of Italy and of Spain, against which Lord Castlereagh and Mr. Canning protested in vain in 1821 and 1823, entirely renounced, both by Austria and by France.

It is true that France has interfered in the internal affairs of Rome and of Mexico, and that England has interfered in the internal affairs of China; but in these instances it has been declared that such intervention was exceptional and temporary, and was contrary to the general principles upon which the foreign policy of England and France were founded.

But the case would be quite different if when a great Power attacks a small independent State with a view to conquest, other Powers were as a rule to remain quiescent. In that case we may be sure that two consequences would follow,—first, that

there would soon remain none but great Powers, and secondly, that all those great Powers would have a despotic form of government, no other being endurable in the eyes of mighty sovereigns in the command of numerous and formidable armies. Such was in fact the danger which threatened Europe both before and after the great catastrophe of 1814.

Against such dangers all free and independent nations are bound to make provision. Such provision in favour of the weaker States is in fact the system called the balance of power, which all European nations conceive themselves bound to regard in their treaties and acquisitions.

It does not follow, however, that in every case of invasion with a view to interference in the internal concerns of a State, neutral Powers are bound to resist the invader.

Thus, when in 1823, France, under the protection of Austria, Prussia, and Russia, designed to invade Spain, and suppress its free Constitution, a very difficult question arose for the Government and Parliament of Great Britain. The ministers of England, while protesting against this interference with the internal government of an independent

State, doubted whether Spain might not wisely and prudently so modify her Constitution as to disarm the hostility of France. The Duke of Wellington, the saviour of Spanish independence, advised such modifications. The Spanish Government rejected all such advice, and stood, as she was entitled to do, on her right.

But was England bound to assist Spain in arms, whatever might be the consequences? Lord Liverpool and Mr. Canning declined to give such assistance, and placed their refusal on the following, among other reasons. After relating the course of the recent negotiations, Lord Liverpool thus continued:—

'It may now be expected by your Lordships, that I should state the reasons why His Majesty's Government consider neutrality to be the policy of this country, and I have no wish to abstain from that statement. In considering the duty of this Government, as to the alternative of neutrality or war, I am bound, in the first instance, to advert to our own domestic situation and policy. Now, my Lords, I have no hesitation or difficulty in again declaring what I stated on the first day of the session, that, if either the honour or the essential

interests of this country should require us to engage in war, we have the means of carrying on war with effect.

'But, my Lords, when I say this, I must add, that after the unexampled contest which we waged for two-and-twenty years, from which we are just now recovering,—a contest as unexampled in magnitude and extent as in its duration,—after all the hardships and sufferings which, in consequence of our unparalleled exertions the country has undergone,—it cannot be consistent with true wisdom or sound policy to re-plunge the country into all the evils and inconveniences of a new war, without a clear and obvious necessity, more particularly at a time when we find our commerce and manufactures, not only recovering from the depression which they more sensibly experienced on the conclusion of peace than while hostilities were raging, but advancing to a degree of prosperity which they never before enjoyed; and when we find our agriculture—the last interest to recover, because the last to suffer—beginning to revive from the difficulties and distress under which it has been labouring. I ask, if there is any rational man, my Lords, who does not feel that, at such a moment,

it is most desirable that this country should continue at peace, if peace can be preserved consistently with our honour, and consistently with our essential interests; and that we should not throw a great proportion of the advantages which we now enjoy into the hands of other countries,—a result which must inevitably happen, if war, no matter under what circumstances, should unfortunately occur? I do not wish to state these advantages, my Lords, for more than they are worth; but they are worth much, and ought to have their due weight upon your Lordships' minds.'

Mr. Canning, to the same purport and the same end, said:—

'Neither will I discuss over again that other proposition, already sufficiently exhausted in other debates, of the applicability of a purely maritime war to a struggle in aid of Spain, in the campaign in which her fate is to be decided. I will not pause to consider what consolation it would have been to the Spanish nation—what source of animation, what encouragement to perseverance in resisting their invader—to learn, that though we could not, as in the last war, march to their aid, and mingle our banners with theirs in battle, we were,

nevertheless, scouring their coasts for prizes, and securing to ourselves an indemnification for our own expenses, in the capture of Martinico. To go to war, therefore, directly, unsparingly, vigorously, against France, in behalf of Spain, in the way in which alone Spain could derive any essential benefit from war co-operation—to join her with heart and hand—or, to wrap ourselves up in a real and *bonâ fide* neutrality,—that was the true alternative.

'Now, before I quit the Peninsula, a single word more to the honourable Member for Westminster and his constituents. Have they estimated the burthens of a Peninsular war? God forbid that, if honour, or good faith, or national interest required it, we should decline the path of duty because it is encompassed with difficulties! But at least we ought to keep some consideration of the difficulties in our minds. We have experience to teach us, with something like accuracy, what are the pecuniary demands of the contest for which we must be prepared, if we enter into a war in the Peninsula. To take only two years and a half of the last Peninsular war, of which I happen to have the accounts at hand, from the beginning of 1812 to the glorious conclusion of the campaign of 1814,

the expense incurred in Spain and Portugal was about £33,000,000.'

Again, in speaking of the prospects of the war, if undertaken, he said:—

'Let no man flatter himself that a war now entered upon would be a short one. Have we so soon forgotten the course and progress of the last war? For my part, I remember well the anticipations with which it began. I remember hearing a man, who will be allowed to have been distinguished by as great sagacity as ever belonged to the most consummate statesman,—I remember hearing Mr. Pitt, not in his place in Parliament (where it might have been his object and his duty to animate zeal and to encourage hope), but in the privacy of his domestic circle, among the friends in whom he confided,—I remember well hearing him say, in 1793, that he expected the war to be of very short duration. That duration ran out to a period beyond the life of him who made the prediction. It outlived his successor, and the successors of that successor, and at length came suddenly and unexpectedly to an end through a combination of miraculous events, such as the most sanguine imagination could not have anticipated. With that ex-

ample full in my recollection, I could not act upon the presumption that a new war once begun would be speedily ended. Let no such expectation induce us to enter a path which, however plain and clear it may appear at the outset of the journey, we should presently see branching into intricacies, and becoming encumbered with obstructions, until we were involved in a labyrinth, from which not we ourselves only, but the generation to come, might in vain endeavour to find the means of extrication.'*

Many, especially of the Whig party, blamed Lord Liverpool and Mr. Canning for the course which they pursued on this occasion. But I think it would now be generally acknowledged that they did all that they were called upon to do, and that to have gone to war for Spain at that time would have been an unnecessary, and probably a fruitless sacrifice of blood and treasure.

Two causes have of late years excited to a very high degree the public sympathy. Nor can it be denied that public sympathy was rightly bestowed.

The cause of Poland so cruelly conquered, and so treacherously used in the first partition, must

* Hansard's Debates, new series, vol. viii.

always commend itself to the heart of a generous nation.

The cause of Denmark, when attacked by Powers who had bound themselves by treaty to respect that integrity they were the first to violate, naturally excited pity and indignation.

But when it became a question whether England should take up arms in either case, it was necessary to look narrowly into the cause for which these arms were to be used.

Was the cause of Poland the same cause as the observance of the Treaty of Vienna?

But the Polish insurgents repudiated and renounced that Treaty, and, had the war been successful, would never have consented to be bound by it.

In the case of Denmark, Great Britain proposed in September, 1862, terms of agreement which would have preserved the integrity of Denmark, have fulfilled the promises made in 1851 by Denmark to Austria and Prussia, and have prevented for all time the interference of Germany with the internal affairs of the kingdom of Denmark.

By whom were these terms accepted, and by whom were they rejected?

They were accepted by Austria and Prussia, and rejected by Denmark.

When, therefore, the Poles wished to create a great kingdom of Poland, comprising besides the territory known by that name, Lithuania, Podolia, and Volhynia, was England bound to go to war on their behalf? or when the Danes, in violation of their promises, attempted to incorporate Schleswig with the kingdom of Denmark, was Great Britain bound to abet them in such a pretension?

In all such cases, if what is rigidly just cannot be obtained, no right course remains but a recommendation to both sides to agree to reasonable terms of accommodation; nor does it follow, because such terms are rejected with haughty disdain at the moment, that they will not serve to temper the violence even of those who in their hour of pride and passion so rejected them.

Nor does it follow, because a State is weak, that it must always be in the right, nor, because it is powerful, that it must always be in the wrong. A fair examination of the question in dispute, and a fair adjustment of opposite claims and complaints, is often a long and troublesome process to which nations will scarcely submit. It is far easier to

act from sympathy, or anger, or pride. And yet if impartial reason had been listened to, how many fruitless wars might have been spared, how much blood and treasure might have been saved to the nations of the world!

When I come to sum up, even in an imperfect catalogue, the many improvements which have taken place in the United Kingdom, her Colonies, and Foreign Relations since 1824, I find Parliament reformed, Slavery abolished, Test and Corporation Acts repealed, Roman Catholic disabilities repealed, Jewish disabilities partially repealed, tithes commuted in England and Ireland, Municipal Corporations reformed in England, Scotland, and Ireland; Poor Law reformed in England, enacted in Scotland and Ireland, Bishops' revenues equalized in England; large sums made applicable to spiritual destitution and small livings; Education of the poor promoted; Customs duties reduced from many hundred to twelve; differential duties abolished; protective duties repealed or reduced; Corn Laws repealed; Taxes on glass, soap, coals, candles, paper, newspaper stamps, and many other articles, repealed. Independence of Belgium and Greece established. Unity of Italy recognized.

Turning in my mind these various changes which have been accomplished by the regular working of Parliamentary Government, and seeing in 1863 so very different a state of public feeling from that which prevailed in 1817, in 1819, and in 1830, I remarked, in a speech in Scotland, that the people seemed to have adopted a motto inscribed on a stone, at the side of the road at the top of one of their Scotch mountains, 'Rest, and be thankful.' I added, that for my part I was not disposed to quarrel with that feeling at that time; although, doubtless, there were other hills to be climbed, and other roads to be made. It was sufficiently obvious, I thought, without my pointing it out, that neither the road-maker nor the traveller when he has got to the top of the hill, though he may rest his weary limbs, and contemplate for a time with gratitude and admiration the space he has traversed, and the prospect around him, thinks of making a perpetual bivouac on the summit he has reached. He may hope, indeed, that his future course may be less arduous, the rocks less steep, the torrents less difficult to traverse, the marsh less unsafe to the tread; but he will still move on after his period of repose, and pursue his journey, all the

more confident in his path from the success he has already achieved.

But to drop metaphor, it seems no violent assumption to suppose, after overcoming the strength of resistance armed with legislative power in the boroughs disfranchised by the Reform Act, the force of religious prejudices entrenched in the Acts which excluded Roman Catholics, Protestant Dissenters, and Jews, from the privileges of the Constitution, the powerful combination of interests which guarded the Corn Laws and all other monopolies, —that after the victorious issue of all these contests, the remaining struggles with selfishness and ignorance will not offer the same difficulties, nor be achieved at the same hazards. I speak, of course, in the expectation that no great organic changes are to be attempted by any considerable party in the State.

The following anecdote is told in Lord Sidmouth's Life:—'In September 1791, after Burke's breach with Fox, Pitt invited him for the first time to dine with him: Lord Grenville, Burke, Addington, and Pitt constituted the party. After dinner, Burke was earnestly representing the danger which threatened this country from the contagion of French princi-

ples, when Pitt said, "Never fear, Mr. Burke, depend on it we shall go on as we are till the day of judgment." "Very likely, Sir," replied Mr. Burke, "it is the day of *no judgment* that I am afraid of."'*

In considering whether the people of these islands would increase their political freedom and social happiness, by deliberately adopting or unconsciously gliding into a more democratic form of government, we should take care not to be misled by the notion that we should thereby be placing ourselves under the sway of pure reason. In North America, after the separation from England, monarchy, aristocracy and church establishments were impossible; but the wisest of the founders of the great Republic, such men as Washington and Hamilton, beheld with anxiety the absence of those barriers by which the stream of democracy might be somewhat restrained. They knew well that an attempt to form a government on pure reason was a pure delusion. Man may be rendered more humane by civilization, better informed by education, but to extirpate his passions, to prevent the aberrations of his will, is impossible.

* Life of Lord Sidmouth, vol. i. p. 72.

The man of railways and ironclads; the man of the electric telegraph and the steam press; the man who can weigh the attraction of the planets to each other, and divide an inch into 10,000 parts; the man whose telescope can bring the moon within a few hundred miles of the earth, and whose power of analysis can ascertain the compound metals of the sun,—this man, in capacity so like a God, is, in his appetites and his passions, in his love and his hatred, in his rapacity and his ambition, different only in degree from Achilles and Agamemnon.

Was it pure reason which induced the men of 1864 to rush in arms against each other, and to meet in mortal combat, both in Europe and in America?

It is because man is a creature of passion and of imagination, as well as of reason, that in the constitution of a government by which he is to be ruled and directed, it is the concern of wisdom and of foresight to avail ourselves of all the influences which may give moderation, force, and sanctity to the supreme authority. Such may be, in a monarchy, the reverence paid to Royalty, the awe inspired by religion, the respect which grows around

an ancient aristocracy, the attachment to long-established laws, the refinement of polished manners, and the social kindness which adorns and animates the domestic relations of a cultivated people. Let no one imagine that without such influences, or some of them at least, a political constitution can reach its highest perfection.

In like manner also, it is clear that, in a Republic, by wise provisions, by giving reasonable duration to a well-constituted Senate, and by placing in the hands of learned and upright judges the administration of fixed and impartial laws, the chief ends of government may be obtained. For what are the chief ends of government?

There was a time (not yet forgotten) when it was supposed to be the duty of government to inculcate religious truth, and to punish the teachers of religious error.

There was a time when it was supposed to be the duty of a government to provide for the wealth of the community; when the Inquisitors of State of Venice sent assassins to put to death those who carried the mechanical skill of a Venetian workman to foreign parts; a time when Colbert put in the pillory the French weavers who did not make

the warp and the woof of the length and breadth which he in his wisdom prescribed; a time when the same Minister punished with great severity the men guilty of having exchanged the manufactures of Holland for the wines of France.

There was a time, also, when it was thought the duty of a government to fix the price of bread and meat, and the minimum of wages; when men who refused to part with corn for less than its value, or to give for labour more than it was worth, were considered the proper objects of the criminal law.

But these errors, and many like them, are fast passing away. It is now known that the proper objects of government are to secure order within, and independence from any enemy without. These are tasks heavy enough, noble enough, to require the energies of the highest political talents for their fulfilment. As for the rest, the utmost liberty of thought and expression, the utmost latitude of domestic industry and foreigh trade, should neither be watched with jealousy nor hampered with restrictions, but protected as the fairest fruits of a free constitution. The task of English legislation for half a century has been to break the chains

which fettered civil, commercial, and religious freedom.

Thus far I have spoken of the measures that have been proposed and carried during these forty memorable years. But some tribute is due to the departed leaders by whose large discourse, looking before and after, these measures have been devised, and by whose followers still living, they have been upheld and defended.

First of these stands Earl Grey, to whom when living this work was first dedicated. Endowed with the noblest spirit, the truest wisdom, he contended throughout for the grant of all the privileges of the Constitution to the Roman Catholics of Ireland, and for an enlarged and reformed representation of the people. He stood by the side of Mr. Fox during his great struggle against the French war. His private letters, published by his son, show an abhorrence of all that is mean and narrow, which, if it deprived him of power under George III. and George IV., was worthy of his illustrious friend, and must commend him to the veneration of posterity.

George Canning belonged during the war to the school of Pitt. He was their animating genius

during the Spanish liberating war,—at a time when, according to an expression of Madame de Staël, 'the Tories of England were the Whigs of Europe;' and if, by a happy inspiration, he had accepted the Foreign Office towards the close of that war, he would surely have thrown into the Treaty of Vienna of 1815, some of the respect for the independence of nations, some of the grateful regard for the rights and liberties of the German, the Spanish, the Italian, and the Polish people, in which that Treaty is so mournfully deficient. For when Mr. Canning in 1823 succeeded Lord Castlereagh, when little could be done to repair former errors, he yet by the high tone of his speeches, and one or two acts of vigour, greatly raised the spirit of the nation, and gave hopes to those friends of liberty on the Continent, who, after shedding their blood to overthrow a foreign military despotism, had been deserted when Europe had been delivered, and imprisoned or banished for their exertions in behalf of freedom.

Mr. Canning had not the force of argument of Plunkett or of Brougham, but his taste was classical, his diction beautiful, and his wit of the most polished as well as of the most pointed kind.

'They who oppose improvement because it is innovation,' said Mr. Canning, 'may one day have to submit to innovation which is not improvement.' Such was his wise spirit, and in that spirit he supported warmly the free-trade measures of Mr. Huskisson.

Sir Robert Peel was the third among the leaders, now no more, who contributed by his influence, by his abilities, by the mastery which he obtained over the minds of young statesmen of the Conservative party, to guide the struggling bark of his country into the haven of safety. I do not need to speak of his powerful understanding, of his ready memory for all which could illustrate or enforce the conclusions to which he desired to lead the sovereign assembly of the empire; of his eloquence when eloquence was required, of his still more prevailing power of marshalling facts, of giving life to statistical details, of the ability he showed in improving the currency, in restoring the finances, in maintaining the dignity of Government. For this bright luminary has not so far sunk into the twilight of past years but that its radiance still cheers and warms the horizon it has left.

But there is a singularity in the career of Sir

Robert Peel which will long startle and perplex the readers of the history of those times. His father, on a solemn occasion, declared that he had devoted him, as a successor of Pitt, to the service of his country. Twice he was the undisputed head of the Tory party,—a Minister in possession of the confidence of the Crown, the leader of a compact majority of the House of Commons. Twice he risked, twice he lost the eminence of power, and the adhesion of a party majority.

The first time he did so to give peace to Ireland, and avoid a dangerous conflict. He said, at the conclusion of a speech to which I have already alluded:—'I am well aware that the fate of this measure cannot now be altered; if it succeed, the credit will belong to others; if it fail, the responsibility will devolve upon me and those with whom I have acted. These chances, with the loss of private friendship, and the alienation of public confidence, I must have foreseen and calculated upon before I ventured to recommend these measures. I assure the House that, in conducting them, I have met with the severest blow which it has ever been my lot to experience; but I am convinced that the time will come, though I may not

live to see it, when full justice will be done by men of all parties to the motives upon which I have acted,—when this question will be fully settled, and when others will see that I had no alternative but to act as I have acted. They will then admit that the course which I have followed, and which I am still prepared to follow, whatever imputation it may expose me to, is the only course which is now necessary for the diminution of the undue, illegitimate, and dangerous power of the Roman Catholics, and for the maintenance and permanent security of Protestant interests.'*

On his last surrender of power, having lost the confidence of his party in that year upon the Corn question, as he had lost it in 1830 upon the Catholic question, he said, at the conclusion of his speech on the 29th June, 1846:—'Within a few hours, probably, that power which I have held for a period of five years will be surrendered into the hands of another,—without repining, without complaint on my part, with a more lively recollection of the support and confidence I have received during several years, than of the opposition which, during a recent period, I have encountered. In relinquish-

* Parliamentary Debates, new series, vol. xx p. 1290.

ing power, I shall leave a name severely censured, I fear, by many who, on public grounds, deeply regret the severance of party ties,—deeply regret that severance, not from interested or personal motives, but from a firm conviction that fidelity to party engagements, the existence and maintenance of a great party, constitutes a powerful instrument of government. I shall surrender power, severely censured also by others, who, from no interested motives, adhere to the principle of Protection, considering the maintenance of it to be essential to the welfare and interests of the country. I shall leave a name execrated by every monopolist, who, from less honourable motives, clamours for Protection because it conduces to his own immediate benefit; but it may be that I shall leave a name sometimes remembered with expressions of goodwill in the abodes of those whose lot it is to labour, and to earn their daily bread by the sweat of their brow, when they shall recruit their exhausted strength with abundant and untaxed food, the sweeter because it is no longer leavened by a sense of injustice.'*

No one, I think, can doubt that on the first oc-

* Parliamentary Debates, vol. lxxxix. p. 1054.

casion, the justice and expediency of removing Roman Catholic disabilities; on the second, the justice and expediency of repealing the Corn Laws, had fully penetrated his clear and sagacious mind. To give effect to his convictions, he forfeited the confidence of that party which had nurtured his talents, and adopted him as its chosen child and champion. In this sense—

'Fuit in parentem
Splendide mendax.'

But he had another parent, of stronger affinity and paramount claims; his country, her welfare, her safety, had a right to his filial duty, and for her sake he twice made a sacrifice for which he deserves her perpetual and grateful commemoration.

But having made the sacrifice of opinions deeply rooted, and party ties warmly cherished, no one can doubt, I think, that he did right when, on the first occasion that the want of confidence displayed itself, he surrendered office. To have relied on old opponents to support him in measures which, in 1831, must have been measures of Parliamentary reform, and, in 1846, measures for the abolition of the differential sugar duties and the repeal of the Navigation Laws, would have been a weak and

unworthy course. A resignation of power was the only fit consummation of a course which could not otherwise have been unquestioned in its motives, or, indeed, have borne peace to his own bosom.

But Sir Robert Peel was to me only a public man. There are others among the departed who must be by me ever loved, ever honoured, ever mourned:—Lord Holland, the inheritor of Mr. Fox's principles, the attached friend of Lord Grey; Lord Lansdowne, the temperate and wise promoter of every liberal reform; Lord Althorp, the honestest, the most disinterested of statesmen. Holland, Lansdowne, Althorp, Melbourne, Carlisle, have been friends by the side of whom I have contended on some of the gravest affairs involving the fate of a nation, with whom I have lived and conversed in hours of the most familiar society, and in both with entire confidence, with mutual trust, without a drop of the gall of envy or of jealousy. To their eminent, to their happy and amiable qualities, I should like to have given a full and grateful testimony.

But I must refrain: it is the object of this Essay to point out that the generation of statesmen who

saw the close, and not the commencement, of the great war,—whose task it has been to heal its wounds, and bring plenty to be the companion of peace,—have not deserved ill of their country.

J. R.

January 3, 1865.

THE ENGLISH GOVERNMENT

AND

CONSTITUTION.

CHAPTER I.

FIRST PRINCIPLES OF THE ENGLISH GOVERNMENT AND CONSTITUTION.

'It is now the generally received opinion, and I think a probable opinion, that to the provisions of that reign (viz. of Henry the Seventh) we are to refer the origin, both of the unlimited power of the Tudors, and of the liberties wrested by our ancestors from the Stuarts; that tyranny was their immediate, and liberty their remote consequence; but he must have great confidence in his own sagacity, who can satisfy himself, that, unaided by subsequent events, he could from a consideration of the causes have foreseen the succession of effects so different.'—*Fox's History of James II.*

It would undoubtedly have required a sagacity of no ordinary kind to have predicted, at the commencement of the arbitrary sway of the House of Tudor, the course of weak misrule and daring opposition,—of fierce contention, and not less cruel

victory, which, marking with a line of blood the history of the Stuart dynasty, at length ended in a peaceable revolution, and the establishment of regular liberty. But those who have seen the harvest can have no doubt that the seed was in the ground; and at this day it ought to be within our power to point out what were the elements of freedom in the state of England, during the reign of the Tudors, which have been since developed in her matchless constitution. Among them, we may, without hesitation, enumerate the following circumstances.

In the first place, the sovereignty of England did not reside in the King solely. All matters of great state importance were made subjects of deliberation in the King's high court of Parliament, which was called together expressly for that purpose. In case of war, it was the business of that assembly to consider of means for carrying it on: if the succession was disputed, or a regency required, an appeal was made to their judgment; and all laws intended to be permanently binding on the people received the sanction of their authority. Nor did the princes of the House of Tudor attempt by any means to diminish or undervalue the importance of Parliament. The crown of

Henry the Seventh rested on a Parliamentary Act. Henry the Eighth repeatedly employed the name, and acknowledged the power of Parliament to change the succession. In the reign of Elizabeth, to say that the Queen by the authority of Parliament had not power to dispose of the succession to the crown was made high treason during her life, and a misdemeanour with forfeiture of goods and chattels after her decease. Thus, however arbitrary the acts of these sovereigns, nothing was taken from the reverence due to the Parliament, the great council of the King, the grand inquest of the nation, and the highest court in the kingdom. The power given to Henry the Eighth, to issue proclamations equal in validity to laws, was indeed a direct blow to parliamentary government. But this Act was in force only eight years, and contained a proviso that these proclamations should not be contrary to the established laws of the realm. During the reigns of Mary and Elizabeth, the Parliament, however subservient, was yet a principal instrument in carrying on the government. Hence arose a necessity, not indeed that a King of England should relinquish all hope of exercising tyrannical power, but that, if successful, he must have his Lords and Commons accomplices in his tyranny.

If these bodies therefore should ever claim that share in the state which the laws allowed them, or if they should refuse their support to the measures of the Crown, the King must either submit to their claims, or by discontinuing parliaments, give fair warning to the people that the form of government was changed.

Secondly. The nobility were not separated from the people by odious distinctions, like the other feudal nobility of Europe. Various causes have been assigned for this difference; without discussing them, I shall content myself with stating the fact. It would not be correct to suppose, however, that the feudal system has not existed in England in a very odious shape. After the Conquest, the feudal tenure seems to have been adopted by all the principal landholders of England, in a great council held in the year 1086.* Wardships, liveries, primer seisins, and ouster-lemains, values and forfeitures of marriage, fines for alienation, tenures by homage, knight-service and escuage, as well as aids for marrying the King's daughter, and knighting his son, all ligaments of the feudal system, are enumerated as part of the law of England, by the Act of Charles II., which abolishes them. Happily,

* Blackstone, b. ii. c. 4.

however, the system was not allowed to throw its roots very deep in the soil. A practice, which was growing general, of sub-infeudations, or granting inferior feuds by the mesne lords, with the same conditions as the chief, was restrained by the Act of *Quia emptores* (18 Edw. I.), which directs that upon all sales, or grants of land in fee, the sub-tenant shall hold, not of the immediate, but of the superior lord. A corrective to the tyranny of the feudal system was also to be found in the constitution of our county courts, the cradle of our liberties, in which are to be found the origin of our juries, and the model of our parliaments. Here the free tenants met to do justice between man and man; and here, it is probable, they deliberated on the means of affording the assistance they were bound to give, to defend their country against an enemy.

Thus much with respect to the free tenants. The state of the villeins is, perhaps, a subject of still more importance. The main difference between the two classes was this. The free tenant held his land, on condition of performing certain fixed services; the villein also frequently held land, but was bound to perform services, base in their nature, and generally undefined in their extent.

Here was real servitude. How soon it began to be abrogated we know not, but we are told by Sir Thomas Smith, who was secretary to Edward VI. and Queen Elizabeth, that in all his time he never knew any instance of a villein in gross, that is, of a villein transferable by sale, and not attached to the soil, in the kingdom; and that the few villeins attached to the soil, who remained, were such only as had belonged to bishops, monasteries, and other ecclesiastical corporations. The last claim of villenage recorded in our courts, was in the fifteenth year of James I. This great change, which had been silently operating in the condition of the people of England, is probably to be attributed to various causes,—the absence of foreign armies,—the necessity of conciliating the people during the civil wars,—and above all, the inherent justice and piety of the nation.

There were several ways in which a villein attached to the soil could obtain his freedom. He might be manumitted. Or if his lord brought an action against him, it was supposed to allow his freedom. Or if he went into a town and settled there, he, in a certain time, enjoyed its immunities, and became free. Or, lastly, if he could show that, for time out of mind, he and his ancestors

had been registered in the roll of the Lord's court, as having possession of the land he held, he obtained a prescriptive right against his lord. This was done by producing a copy of the court roll, and hence the term copyholder. It has been supposed by some that copyhold was known before the Conquest. At whatever time it originated, the early prevalence of freedom is nobly characteristic of the English nation. Villenage was known in France till near the end of the eighteenth century; in Spain it is newly abolished; in Germany it is not extinct; in Russia it is in full vigour.* But the spirit of the English people, and the equality of the common-law, have always been a just corrective of the degrading institutions and customs imported from other countries. Magna Charta itself is a noble and singular proof of the sympathy then existing between the barons and the people of England. Philippe de Comines speaks of the humanity with which the nobility treated the people in the civil wars. It would seem Englishmen have always felt that, if the order of civil society required the relations of superior and inferior ranks, nature conferred feelings and capacities with impartial justice upon all.

* Abolished by the present Emperor, to his immortal honour, 1864.

Intimately connected with this spirit, is the absence of any distinction between gentleman and *roturier*. Sir Thomas Smith is perhaps the first author who takes notice of the difference of the title of gentleman in England and on the Continent. I subjoin an extract from his work:—'Ordinarily the King doth only make knights and create barons, or higher degrees; for as for gentlemen, they be made good cheap in England. For whosoever studieth the laws of the realm, who studieth in the universities, who professeth liberal sciences; and, to be short, who can live idly and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called Master, for that is the title which men give to esquires and other gentlemen, and shall be taken for a gentleman: for true it is with us as is said, *Tanti eris aliis quanti tibi feceris;* and, if need be, a king of heralds shall also give him, for money, arms newly made and invented, the title whereof shall pretend to have been found by the said herald in perusing and viewing of old registers, where his ancestors, in times past, had been recorded to bear the same. . . . A man may make doubt and question whether this manner of making gentlemen is to be allowed or no; and for my part I am of

that opinion, that it is not amiss. For, first, the prince loseth nothing by it, as he should do, if it were as in France; for the yeoman or husbandman is no more subject to taile or tax in England than the gentleman: no, in every payment to the King, the gentleman is more charged, which he beareth the gladlier, and dareth not gainsay for to save and keep his honour and reputation.'*— 'The law,' says Mr. Hallam, 'has never taken notice of gentlemen.†' From the reign of Henry III., at least, the legal equality of all ranks below the peerage was, to every essential purpose, as complete as at present. Compare two writers nearly contemporary,—Bracton with Beaumanoir, and mark how the customs of England and France are distinguishable in this respect. The Frenchman ranges the people under three divisions,—the noble, the free, and the servile; our countryman has no generic class but freedom and villenage. No restraint seems ever to have lain upon marriage. The purchase of land held by knight-ser-

*'De Republicâ Anglorum,' lib. i. c. 20, 21.

† The Statute of Merton certainly affords an exception to this remark, when it speaks of the wards of noblemen being disparaged by marrying *villeins, or others as burgesses*. But the same Act allows that such marriages, if made by the ward's consent after fourteen years of age, are legal.—*J. R.*

vice was always open to all freemen. From the beginning our law has been no respecter of persons. It screens not the gentleman of ancient lineage from the judgment of an ordinary jury, nor from ignominious punishment. It confers not, nor ever did confer, those unjust immunities from public burthens which the superior orders arrogated to themselves upon the Continent. Thus, while the privileges of our Peers, as hereditary legislators of a free people, are incomparably more valuable and dignified, they are far less invidious in their exercise than those of any other nobility in Europe. It is, I am firmly persuaded, to this peculiarly democratical character of the English monarchy, that we are indebted for its long permanence, its regular improvement, and its present vigour. It is a singular, a providential circumstance, that, in an age when the gradual march of civilization and commerce was so little foreseen, our ancestors, deviating from the usages of neighbouring countries, should, as if deliberately, have guarded against that expansive force, which, in bursting through obstacles improvidently opposed, has scattered havoc over Europe.'*

Thus we see the nobility of England formed no

* Middle Ages, vol. ii. p. 19.

separate caste. Their sons, not excepting the eldest, were in all respects, *part and parcel* of the commons of the land. It was decided, by votes of Parliament, both in the reign of Henry VIII. and in that of Elizabeth, that the eldest son of the Earl of Bedford was entitled to sit in the House of Commons. No decision could well be more auspicious. The heirs to a peerage, instead of feeling that petty pride, and indulging that insolent ignorance, which high rank has so great a tendency to breed, were members of an assembly in which they deliberated with the knights, citizens, and burgesses of the land: they thus imbibed the feelings, and became acquainted with the wants of the people. When a struggle was to be made for freedom, many of them sympathized in the cause; scarcely any quitted their country; and thus their importance survived even the democratic revolution of 1649.

Thirdly. The last and the greatest element of freedom which existed in England, was the constitution of her House of Commons. Some persons, indeed, have considered that all virtue was taken away from that body by a law of Henry VI., which limits the right of voting in counties to forty-shilling freeholders; and have dated the fall of the

liberties of England from the period when villenage was gradually giving way to freedom. To such an opinion I certainly do not subscribe. Nor is it my intention to enter here into any controversy respecting the origin of our representation; a discussion belonging properly to an earlier period than that we are now speaking of. The points to which I shall now confine my remarks are the Principle of Representation, and the Nature of our own Representation generally.

It has been observed, that in the ancient commonwealths, the people, who decided on public affairs, were all of a higher order than those of the poorer class, who in England read newspapers and take an interest in political questions. But this is a complete mistake. Slaves, it is true, had nothing to do with political functions, but the poorest artisans who were free, had a voice in the public councils. The manner in which their votes were to be given, formed a difficulty which the ancient states did not altogether successfully vanquish. If the promiscuous multitude were admitted, with equal suffrages, into the public assemblies, as at Athens, the decisions were hasty, passionate, unjust, and capricious. If a method was adopted, as that of centuries at Rome, of giving a weight to property

against numbers, it was difficult to avoid putting the scale entirely in the hands of the rich, enabling them to outvote the poor, and thus making an odious distinction between the richer and poorer, higher and lower classes of the community. This evil was greatly felt at Rome, and the expedient of setting up another and independent assembly, which decided by numbers only, was a very rude and a very imperfect remedy.*

The principle of representation nearly, if not entirely, overcomes these obstacles. A certain number of persons are chosen by the people at large, whose commission it is to watch over the interests of the community. Consisting naturally and inevitably of persons of some fortune and education, they are not so likely to be borne away by the torrent of passion, as the general, unsifted mass of the nation. Depending upon the people ultimately for their power, they are not so liable to act from personal interest, or a corporation spirit, as a body of men whose power is attached for ever

* See Hume's Essays. Essay on some Remarkable Customs.

——— My soul aches
To know, when two authorities are up,
Neither supreme, how soon confusion
May enter 'twixt the gap of both.

Coriolanus, act iii.

to their rank in the State. If the representative assembly is entrusted for no very short period with the concerns of the people, and if the members of it are always capable of being re-elected, it will evidently become enlightened on all the interests, and capable of discussing, with ability, all the great movements of the State. The most powerful minds in the nation will be brought to bear on any important measure of policy or justice; and, at the same time, the humblest individual in the country is sure, through some channel or other, to find a hearing for his injuries in the presence of the representatives of the whole people.

It is essential to remark, that in the English House of Commons the knights sate in the same assembly with the citizens and burgesses. There are few things in our early Constitution of more importance than this. Cities and towns, however necessary their assistance for granting aids and taxes, are not likely to obtain, in a feudal country, that kind of respect from the other bodies in the State which would enable them to claim a large share of political power. The separation of the mercantile class from the rest of the community, was perhaps one of the chief causes of the failure of the Spanish, and other early constitutions similar to our own.

But in England, the knights, who represented the landed property of the country, gave a stability and compactness to the frame of the House of Commons, and placed it on a broad foundation, not easily shaken by any king who should attempt its overthrow.

The sitting of the knights, citizens, and burgesses in one assembly, was perhaps partly owing to that equality of civil rights, which has before been mentioned; no imaginary distinction separated the country knight of ancient lineage from the city merchant of recent fortune. It was not, however, always the rule, and has rather been established by one of those happy unions of fortune and counsel to which the English Constitution owes so much; —I know not, indeed, if I ought to call it fortune. It was a part of the practical wisdom of our ancestors, to alter and vary the form of our institutions as they went on; to suit them to the circumstances of the time, and reform them according to the dictates of experience. They never ceased to work upon our frame of government, as a sculptor fashions the model of a favourite statue. It is an art that is now seldom used, and the disuse has been attended with evils of the most alarming magnitude.

CHAPTER II.

HENRY THE SEVENTH.

'The King, to speak of him in terms equal to his deserving, was one of the best sort of wonders, a wonder for wise men. He had parts, both in his virtues and his fortune, not so fit for a commonplace as for observation.'—*Lord Bacon, Life and Reign of Henry VII.*

THE battle of Bosworth Field put an end to the long and destructive contest which had wasted the blood, and disfigured the fair face of England, in the quarrel between the Houses of York and Lancaster. Such a contention is little less disgraceful to mankind than it would have been to have made the white and red roses the subject, instead of the symbols, of hostility, and affords but too much ground for the assertion of a democratic writer, that hereditary right has caused as long and as sanguinary wars as elective monarchy.

Henry, who was crowned in the field of battle, lost no time in proving he was as well able to keep,

as to acquire a throne. He immediately summoned a parliament, and obtained from them the passing of a statute, not declaring that he was lawful heir to the crown; not asserting the right of conquest, or of election; but enacting 'that the inheritance of the crown should rest, remain, and abide in the king.' He procured this statute to be confirmed by the Pope's bull. In the same spirit of peace and moderation he caused many exceptions to be inserted in the Acts for attainting the adherents of King Richard. A few years afterwards he procured a law to be passed, declaring that no one should be called in question for obeying a king *de facto*. He thus quieted the minds of his subjects, and added more to the stability of his government than he could possibly have done by displaying what Bacon calls the wreath of five,—to wit, his own descent, and that of his queen, the claim of conquest, and the authorities, parliamentary and papal. Among these titles, that of the House of York seems to have given him little satisfaction, and he took care not to crown his queen for a considerable time after his marriage. Indeed, it is certain that, whether from prejudice or policy, his Lancastrian partialities influenced his conduct during the whole of his reign.

One of Henry's first endeavours was to procure a law to prevent conspiracies among the great, and riots among the people. In a parliament assembled in the third year of his reign, Morton, Archbishop of Canterbury and Chancellor of the kingdom, spoke the following words:—'His Grace (*i. e.* the King) saith, that it is not the blood spilt in the field that will save the blood in the city; nor the marshal's sword that will set this kingdom in perfect peace; but that the true way is to stop the seeds of sedition and rebellion at the beginnings, and for that purpose to devise, confirm, and quicken good and wholesome laws against riots and unlawful assemblies of people, and all combinations and confederacies of them by liveries, tokens, and other badges of factious dependence; that the peace of the land may by these ordinances, as by bars of iron, be soundly bound in and strengthened, and all force, both in court, country, and private houses, be suppressed.'

The chief law passed by Parliament with the view here explained, was an Act confirming the authority of the Star Chamber in certain cases. The Star Chamber, composed of prelates, peers, counsellors, and judges, had an undefined jurisdiction without the intervention of a jury over many

offences not capital, and over actions proving a design to commit offences not actually committed. 'But that which was principally aimed at by this Act,' says Lord Bacon, 'was force, and the two chief supports of force, combination of multitudes, and maintenance or headship of great persons.' The danger to liberty, of entrusting power so large and arbitrary to persons named by the Crown, does not appear to have struck any one at this time; and Lord Bacon is lavish in his praises of the Star Chamber, calling it one of the sagest and noblest institutions of this kingdom. But long civil war induces a people to surrender liberty for peace, as long peace induces them to encounter even civil war for liberty. One of the next Acts of the Parliament was the sanction of an arbitrary tax. This species of tax, known by the name of Benevolence, had been raised by Edward IV., without the consent of Parliament, and abolished by Richard III. in a very remarkable statute. It was now revived by Act of Parliament on the occasion of a war with France. But the real object was to amass money; for Henry had scarcely landed in France when he concluded a peace, by which he was to receive 745,000 ducats (about £186,000 sterling) and a tribute of 25 crowns yearly.

This reign was much disturbed by rebellion. Attachment to the House of York, and the burthen of taxes, seem to have been the chief causes of discontent. Bacon attributes an insurrection in the North to respect for the memory of Richard III.,—a proof that his government, in that part of the kingdom, had not been very oppressive.

The chief end of Henry's administration was to restrain the inordinate power of the great barons. Two laws enacted for this purpose, the one facilitating the sale of entailed lands by what is called breaking an entail, and another suppressing retainers, were, with other statutes, and the extensive authority given to the Star Chamber, eminently conducive to the object for which they were framed. In thus directing his policy, Henry adopted views prompted indeed by his own jealous temper, but which ultimately were beneficial to his country. The course of justice became steady, disorders were suppressed, the tranquillity of the whole country was secured; and the Commons, being no longer oppressed by feudal power, or distracted by domestic war, were enabled to acquire, first wealth, then importance, and lastly freedom. Bacon, it is true, attributes many of the disturbances which still afflicted the country during this reign to the neglect

and distrust of the nobility shown by the King. But the fault, if it were one, was on the right side. Had not Henry governed his nobles with a strong hand, a powerful oligarchy might have perpetuated in this country the barbarous licence of Poland. The arts, the letters, and the strength of the kingdom, under the sway of Elizabeth, are in great part to be attributed to the policy of her grandfather.

The last years of Henry were disgraced by the cruel and arbitrary exactions of which Empson and Dudley were the vile and execrated instruments. His successor, with a generous magnanimity not uncommon in the world, gave up the offenders, and profited by the offence; sent the collectors to the scaffold, and kept the money in his treasury.

CHAPTER III.

HENRY THE EIGHTH.

'When love could teach a monarch to be wise,
And gospel light first dawn'd from Bullen's eyes.'—*Gray.*

THE reign of Henry the Eighth is justly esteemed the most arbitrary in our annals. Yet it affords many curious precedents of the authority of Parliament. One of the first of these is the Act granting tonnage and poundage. The King had levied these duties for some time by his own prerogative. But in the sixth year of his reign he met with resistance, and was obliged to apply to Parliament for their sanction. The Act that was passed is curious. It condemns those who had resisted, but at the same time grants to the King, *de novo*, the duties of tonnage and poundage. Upon the whole, this precedent, though inconsistent with itself, makes against the power assumed by the Crown. For if the King had the right to raise those duties, the Act would

have been merely declaratory. The making a new enactment proves, with whatever terms it might be qualified, that the King was not previously entitled by his prerogative to levy tonnage and poundage, and that his orders on this subject might be resisted with impunity. So, indeed, the Act seems to have been understood; for at the commencement of the four following reigns, we find the duties in question regularly granted by Parliament, in the first year of the reign.*

* Statutes 1 Edw. VI. c. 13, 1 Mary, st. 2, c. 18, 1 Eliz. c. 20, 1 James, c. 33. By all these Acts, tonnage and poundage are granted for life. They are all amongst the last Acts of the session. Notwithstanding these statutes, Mr. Hume asserts, that Henry's 'successors, for more than a century, persevered in the like irregular practice, if a practice may deserve that epithet, in which the whole nation acquiesced, and which gave no offence. But when Charles I. attempted to continue in the same course, which had now received the sanction of so many generations, so much were the opinions of men altered, that a furious tempest was excited by it, and historians, partial or ignorant, still represent this measure as a most violent and unprecedented enormity in this unhappy prince.' And with reason. These duties were not granted to Charles, as they had been to his predecessors, and he attempted to revive the practice which was not permitted to Henry VIII. When Mr. Hume finds that Edward, Mary, Elizabeth, and James levied these duties, during the few months they were not in force, or whether he has not fallen into an error, in supposing they were levied before they were granted by Parliament, I will not presume to determine.

Another remarkable precedent is afforded by an indiscreet step of Wolsey. Wishing to impose a very heavy tax, he proposed to go himself into the House of Commons, for the purpose of silencing, by his presence, all opposition. Many were disposed to resist his admission into the House; but when that point had been conceded, the Speaker, Sir Thomas More, opposed the opinion of the majority, that he should be admitted with a few followers only. The Speaker was of opinion that they should receive him 'with all his pomp, with his maces, his pillars, his pole-axes, his cross, his hat, and the great seal too.' The Cardinal being thus admitted, made a long and eloquent oration against the King of France, declared that the king could not do otherwise than join with the Emperor against him, and demanded of the Commons the sum of £800,000 as the estimated charge of the war. 'At this request,' as we are told by the great-grandson and biographer of Sir Thomas More, 'the House was silent; and when the minister demanded some reasonable answer, every member held his peace. At last, the Speaker, falling on his knees, with much reverence, excused the silence of the House, abashed, as he said, at the sight of so noble a personage, who was able

to amaze the wisest and most learned men in the realm; but with many probable arguments he endeavoured to 'show the Cardinal that his coming thither was neither expedient nor agreeable to the ancient liberties of that House;' and, in conclusion, told him; 'that except all the members could put their several thoughts into his head, he alone was unable, in so weighty a matter, to give his grace a sufficient answer. Whereupon the Cardinal, displeased with the Speaker, suddenly rose up in a rage and departed.' The result was, that a subsidy was granted, but much less than the Cardinal had asked.

In 1526, Wolsey sent commissioners by his own authority to levy a sixth part of the goods of the laity, and a tenth part of the goods of the clergy; but the commissioners were resisted, and Henry was obliged to disavow his minister, and annul the commission.

Yet in the same reign in which so much spirit was shown, a magistrate of London was sent to the wars in Scotland, where he was soon after killed, because he had refused to contribute to a benevolence.* What a confusion of law and custom! how uncertain the bounds of right and prerogative!

* Henry's History of England.

The arbitrary nature of the government of Henry, on every subject but that of taxes, is well known. In all his violations of law and justice he was strenuously supported by his Parliament. When he wished to rid himself of his wives, Parliament assisted him; when he desired to put to death his prime ministers, Parliament condemned them without a trial; when at length he chose to make laws by his own will only, Parliament gave him authority to do so. It is no wonder, therefore, to find him holding high the privileges of Parliament. A curious instance of this occurs in the case of a Mr. Ferrers, a member of the House of Commons, who was arrested for debt. The House immediately released him, and imprisoned those who had arrested him. Henry upon this occasion made the following speech to the House on the question of privilege:—'He first commended their wisdom in maintaining the privileges of their House; which he would not have infringed in any point. He alleged that he, being at the head of the Parliament, and attending in his own person in the business thereof, ought in reason to have privilege for himself and all his servants in attendance on him. So that, if Ferrers had been no burgess, but only his servant, in respect of that he ought to have privilege as well as any

other. For I understand,' says he, 'that you enjoy the same privilege, not only for yourselves, but even for your cooks and horsekeepers. My Lord Chancellor here present hath informed me, that when he was Speaker of the Lower House, the cook of the Temple was arrested in London, on an execution upon the statute of staple. And, because the said cook served the Speaker in that office, he was taken out of execution by the privilege of Parliament. Likewise, the judges have informed us, that we at no time stand so high in our estate royal as in the time of Parliament; when we, as head, and you as members, are conjoined and knit together into one body politic; so that whatsoever is done or offered during that time against the meanest member of the House is judged as done against our own person and whole court of Parliament. The prerogative of which court is so great, that, as our learned in the laws inform us, all acts and processes, coming out of any other inferior courts, must for that time cease and give place to the highest.'

Thus did Henry exalt the power of the Parliament, which had so vigorously supported him. But it does not appear that in so doing they had gone beyond the wishes of their constituents.

Henry seems upon the whole to have been a popular tyrant; and there is some truth in the remark of Mr. Hume, that the English of this age, like Eastern slaves, were inclined to admire those acts of violence and tyranny which were exercised over themselves and at their own expense.

CHAPTER IV.

THE REFORMATION.

'He that would do right to religion cannot take a more effectual course than by reconciling it with the happiness of mankind.'—*Tillotson.*

THE Reformation in England was by no means similar in its history to the great revolution of men's minds which took place in Switzerland, Scotland, and Germany. It was begun by the King, in consequence of his desire to put away his wife and marry another; and this quarrel was not only unconnected with the doctrine of Luther, but that doctrine was at the same time condemned, and its supporters capitally punished. Had the Pope been as complying as he had often been before, Henry VIII. would have been, if not one of the most pure and holy saints, one of the most faithful and zealous servants that the Church of Rome could boast of possessing. Even after the breach seemed irreparable, propositions were made from Rome, and were

accepted by Henry;* but as his messenger did not arrive on the day fixed, the Emperor's party in the Consistory took advantage of the failure of punctuality to obtain a vote closing the door upon reconciliation for ever. The messenger of the King of England arrived only two days too late to reconcile his master with the Pope, and arrest the progress of religious light in this country.

The breach with the Church of Rome would still not have led immediately to the Reformation, had not Cranmer, holding the high station of Archbishop of Canterbury, with Cromwell, many of the Peers, and a large number of the educated class, endeavoured to conduct the nation, step by step, to abjure the errors and superstitions of the Roman Catholic worship. At the same time, they were obliged, even for the sake of the cause they favoured, to retain many ceremonies to which the people were attached, and which the English reformers copied from the Roman Church, as the Roman Church had originally copied some of their ceremonies from the heathen worship.

The first step which Henry took of his own accord, against the Church of Rome after the divorce, was the dissolution of the monasteries.

* Burnet's Hist. of Ref., vol. i. p. 136.

The motive which induced him to adopt this measure, was probably a spirit of rapacity; for with all his power he found it a very difficult matter to squeeze money from his subjects. With the sum to be derived from the sale of the monasteries, he proposed to make harbours all round the coast of England; a plausible pretext, rather than a *bonâ fide* reason for his confiscations. Those of the nobility who had adopted the opinions of the reformers, gave willingly in to the measure, and no doubt their zeal was quickened by the share they got of the spoil. The abuses which prevailed in the monasteries were not, however, a groundless pretext. The relations of the visitors who were appointed by the King to reform the monasteries, and report their state, display grounds for believing that they were anything rather than seminaries of piety and morality.*

The next steps taken in the road of reformation were some directions respecting the worship of images and praying to saints, and, what was much

* Burnet, Hist. of Ref., book i. p. 198. Dr. Lingard, however, refuses credit to those charges: he observes with truth that they were *ex parte* statements, to which the accused had no opportunity of replying. It would be difficult, on the other hand, to suppose all the facts alleged to be fabrications. Monks and nuns are not infallible or impeccable beings.

more important, a permission to the people to read a translation of the Bible, in St. Paul's Church. The people flocked to the place, and one person was generally chosen to read aloud to the rest, till the bishop, alarmed at the concourse, forbade the practice, as a disturbance to the service of the church. The destruction of some of the images exposed to the public several scandalous cheats.*

The outset of the Reformation in England was marked by a more cruel and insupportable religious tyranny than had ever subsisted under the Papal dominion. In the times of Popery, the articles of faith were placed in the custody of the priest; and the people received from him some knowledge of the doctrines of Christianity, some notion of the duties of morality, and an unbounded reverence for the authority and magnificence of the Church. But Henry VIII., after partly removing the veil of ignorance from the eyes of his people, required them not to go a single step further than he himself did; and commanded the nation by Act of Parliament to believe six articles of faith therein laid down, and whatever else the King might choose to ordain.

To punish men for their opinions on speculative

* Note (A) at the end of the volume.

articles of belief, is one of the luxuries which tyranny has invented in modern times. Dionysius and Domitian knew nothing of it. It was enjoyed by Henry to its full extent. He was not, like Philip II. or Charles IX., merely the minister of bigotry of which he was himself the disciple. He taught from his own mouth the opinions which were to regulate his subjects; he contained in his own breast the rule of orthodoxy; and he had the triumph of confuting the heretic whom he afterwards had the gratification to burn.

The religion established by Henry VIII. was so far from being the reformed church of Luther or of Calvin, that he prided himself on maintaining the Roman Catholic faith after he had shaken off the supremacy of the Pope. His ordinances indeed vibrated for a short time between the old and the new religion, as he listened more to Cranmer or to Gardiner; but the law of the Six Articles, which contains the creed he finally imposed on his people, maintains and confirms all the leading articles of the Roman belief. They were as follows:—

First, That, in the sacrament of the altar, after the consecration, there remained no substance of bread and wine, but under these forms the natural body and blood of Christ were present. *Secondly*,

That communion in both kinds was not necessary to salvation to all persons by the law of God. *Thirdly*, That priests after the order of priesthood might not marry by the law of God. *Fourthly*, That vows of chastity ought to be observed by the law of God. *Fifthly*, That the use of private masses ought to be continued; which, as it was agreeable to God's law, so men received great benefit by them. *Sixthly*, That auricular confession was expedient and necessary, and ought to be retained in the Church.

The actual Reformation in England was the work of the Duke of Somerset, Protector, in the early part of the reign of Edward VI. In the first year of that reign, he sent visitors to persuade the people not to pray to saints, to procure that images should be broken; and to exhort the nation generally, to leave off the use of the mass, dirges, and prayers in a foreign language. By Act of Parliament in the same year he prohibited speaking against giving the sacrament in both kinds; in that and the two following years he established the liturgy of the Church of England. The law of the six articles was repealed. The Reformation in England was thus made by the Crown and the aristocracy. The people, though agitated by reli-

gious disputes, seem to have been hardly ripe for so great a revolution. Insurrections of a serious nature took place in Devonshire, Norfolk, and elsewhere. The preaching of the Roman Catholic priesthood produced so strong an impression, that all the means of authority were put in motion to counteract it. The clergy were first ordered not to preach out of their parishes without a licence, which of course was granted only to the favoured sect; and this not proving sufficient, preaching was altogether prohibited,*—a singular step in the history of the Reformation!

On the other hand, Mary, on succeeding to the throne, found it an easy matter to revive the ancient worship. Nor did she hesitate to call frequent new parliaments, who each went beyond the former in the road of reconciliation. The first refused to re-establish the law of the six articles; but only one year afterwards, the nation was formally reconciled to the Church of Rome, and the Parliament thanked the Pope for pardoning their long heresy. He said, with equal candour and truth, that he ought to thank them for putting a rich country again under his dominion.

* Burnet, Hist. Ref.

CHAPTER V.

QUEEN ELIZABETH.

'Sur ce sanglant théâtre, où cent héros périrent,
Sur ce trône glissant, dont cent rois descendirent,
Une femme, à ses pieds enchaînant les destins,
De l'éclat de son règne étonnait les humains.
C'était Élisabeth ; elle dont la prudence,
De l'Europe, à son choix fit pencher la balance,
Et fit aimer son joug à l'Anglois indompté,
Qui ne peut ni servir, ni vivre en liberté.
Ses peuples sous son règne ont oublié leurs pertes ;
De leurs troupeaux féconds leurs plaines sont couvertes,
Les guérets de leurs blés, les mers de leurs vaisseaux,
Ils sont craints sur la terre, ils sont rois sur les eaux.
Leur flotte impérieuse, asservissant Neptune,
Des bouts de l'univers appelle la Fortune,
Londres jadis barbare est le centre des arts,
Le magasin du monde, et le temple de Mars.'

La Henriade, chant 1.

QUEEN Elizabeth is the greatest of English, perhaps of all modern sovereigns. In a period remarkable for long and sanguinary wars, she made her name respected abroad, without a waste of blood or treasure; and, in a time of great political ferment, she

maintained the most absolute authority at home, without any loss of the affections of her people. She obtained glory without conquest, and unlimited power without odium.

The means by which results so extraordinary were obtained, comprise all the springs of her foreign and domestic policy. Three principal sources of her fame and success, however, may be discerned.

First.—She made herself the head of the Protestant interest in Europe. To do this, it was not necessary to place herself in the front of a confederacy of belligerent powers. It was sufficient to give the sanction of the name of England, a rich and united kingdom, to the cause which she supported. The spirit and enterprise of her subjects, with some assistance from her, did the rest. By this policy, also, she pleased the popular feeling of her kingdom, and opened a channel in which all the restless action of her nobility and gentry might be borne out and find a current. The national fame was likewise a gainer by the reputation acquired by English knights and soldiers, in fighting against the League in France, and Philip II. in the Netherlands. The country assumed her proper station in the van of the defenders of liberty; the blood of

Sir Philip Sidney was shed in the cause of the freedom of the world; and tyrants trembled at the name of Elizabeth and of England.

Secondly.—She took care nót to ask too much money of the people. Her treaties with Henry IV. resemble more the hard bargain of a Swiss Canton than the generous alliance of a powerful and friendly sovereign. She well knew that Parliament held the purse, and must, therefore, become absolute master of a distressed or expensive sovereign. In her situation economy was power. Happy would it have been for Leo X., for Charles I., for Louis XVI., if they and their immediate predecessors had been aware of this keystone of their fate! The Reformation, the civil wars of England, and the revolution in France, had their rise in disordered finances. Men may perhaps submit to be oppressed, but will not easily consent to pay a dear price for the oppression.

Thirdly.—She yielded to the popular voice, and cultivated popular favour, whenever it could be done with dignity and safety. She could be severe and kind by turns. Thus, having at one time excited great murmurs among the House of Commons by forbidding liberty of speech, she soon thought proper to revoke her commands. But nothing

shows her policy better than her conduct respecting monopolies. There was hardly any article of which a monopoly was not granted by the Crown. The evil grew so grievous that even Elizabeth's House of Commons echoed with angry speeches and universal complaint. The Queen instantly yielded. She did not acknowledge that the debates of the House of Commons had any weight with her, but she informed them, through her Secretary of State, that she consented to quash those monopolies that were illegal, and to submit to an inquiry with respect to the rest. Secretary Cecil made an apology to the House for having compared them to a school, and said, he by no means intended to deny the freedom of speech.*

In her manners also the Queen took care to show the greatest confidence in the people. No one knew better how to buy the nation's heart with a phrase, to declare, on occasion, that her treasure was better in her subjects' purses than in her own coffers, and that her best guards were the affections of her people. She was well aware that nothing is so pleasing as the condescension of supreme power. She therefore displayed her greatness by the pomp of her state, and her goodness by the affability of her language.

* Note (B) at the end of the volume.

By such means Queen Elizabeth was enabled to maintain a stable authority over an unquiet people in a restless age. France was distracted by civil war; the king of Spain was employed in a bootless and bloody quarrel with his insurgent subjects in the Netherlands and Holland; Germany was shaken in every limb by the Reformation; but the Queen of England reaped the reward of prudence and courage in the tranquillity and affectionate obedience of her kingdom and people. Her power was enormous. When the Commons remonstrated, she speedily dissolved them. At one time she told them not to meddle in affairs of state. Still less did she permit any proposal of alteration in the Church; and she repeatedly imprisoned, or procured to be imprisoned, those who gainsayed her high pleasure in these matters.* She dispensed with those laws which were unpalatable to her, and regulated the behaviour of her people by ordinance and arbitrary mandate. She forbade the cultivation of woad, as offensive to her royal nostrils. The Court of Star Chamber and the Court of High Commission not being sufficiently arbitrary, it was ordered that every person who imported forbidden books, or committed other offences specified, should be punished by martial law. Those who employed the press as an

* Note (C) at the end of the volume.

organ of discussion were speedily condemned. Mr. John Udall, a Puritan minister, charged with having written 'a slanderous and infamous libel against the Queen's Majesty,' was tried for a felony, and convicted. The sentence was never executed, but the poor man, after several years' confinement, died in prison. The judge told the jury to find him only author of the book, for the offence of writing it had been already determined to be felony by the judges. A gentleman who had written a book to dissuade the Queen from marrying a French prince, was sentenced by a law of Queen Mary to lose his hand. A Puritan of the name of Penry was condemned and executed for seditious papers found in his pocket. Struck by these arbitrary proceedings, Mr. Hume has compared the government of Elizabeth to the modern government of Turkey, and remarking that, in both cases, the sovereign was deprived of the power of levying money on his subjects, he asserts, 'that in both countries this limitation, unsupported by other privileges, appears rather prejudicial to the people.' It is needless to say much on this fanciful analogy, so unworthy of a great historian. Did it ever happen that a Turkish house of commons prevailed on the Sultan to correct the extortion of his pashas, as the English House of Commons induced Elizabeth to surrender the odious monopolies? Did Queen

Elizabeth ever put to death the holders of those monopolies without trial, in order to seize their ill-gotten wealth? In fact, the authority of the House of Commons made some advances during the reign of Elizabeth. The very weight of the power that was used to crush their remonstrances shows the strength of their resistance. The debates of the House of Commons during this reign fill a volume and a half of the old parliamentary history. An attentive observer of this country, at that period, would scarcely have failed to remark, that the force of free institutions was suspended, but not destroyed, by the personal influence of Elizabeth; and while he acknowledged that no sovereign ever carried the art of reigning further, he would perceive that the nation had granted her a lease for life of arbitrary power, but had not alienated for ever the inheritance of freedom.

It was happy for the country that Queen Elizabeth found it her interest to embrace the Protestant religion, and that, by the foolish as well as atrocious plots of the Roman Catholics, she was forced to cultivate still more strongly the affections of the Protestant party. Boast as we may of our Constitution, had Queen Elizabeth been a Roman Catholic, or James II. a Protestant, there would have been no liberty in England.

CHAPTER VI.

JAMES THE FIRST.

'Every one pointed to her (Queen Elizabeth's) white hairs, and said with that peaceable Leontius, 'When this snow melteth, there will be a flood.''—*Hall's Sermons.*

During the latter years of Elizabeth, all classes of people were impatient for the accession of her successor. There is nothing so irksome to mankind as continued demands for a long series of years from the same person upon their admiration and their gratitude. In proportion as the novelty wears out, weariness succeeds to wonder, and envy to weariness; the many, like fastidious critics, begin to find faults where they saw nothing but beauties before, and some are angry that there are so few faults to find. The young love to censure what the old extravagantly praised, and the giddy are disgusted with the monotony of excellence. There might perhaps, however, be other causes why the English nation should desire the reign of James.

A new spirit had arisen during the latter years of Elizabeth, both in religion and politics. A large party, known by the name of Puritans, had been formed, or rather, increased and united, who aimed at a further reformation in the Church. The Romish ceremonies, which had been preserved in our form of worship, found no pardon in the minds of this stern sect; and, had they been able to execute their wishes, the power and revenues of the bishops would have been submitted to their crucible. Their bold and uncompromising principles led them also to free principles of government; their understandings quickly stripped a king of his divinity, and their hearts raised the subject to a level with the sovereign. Besides the progress of these opinions, a new standard of political right had been introduced by the general study of Greek and Roman authors. Not only had the glories of the ancient republics kindled a flame in the breasts of generous men, but the diffusion of classical knowledge had prepared the upper classes of society to require more enlightened methods of proceeding, and a more regular distribution of powers and privileges than had ever before been found necessary. The community was advanced in wealth, in arts, in literature, and in morals. Above all, the Reformation

was a perpetual source of inquiry and discussion; the minds of men had taken a start towards improvement, and nothing could stop their course.

The reforms which this new world manifestly demanded, were naturally postponed till after the death of Elizabeth. Her age and her reputation merited, her vigour and experience enjoined forbearance. But James, a foreign king, without reputation of glory or of firmness, did not enforce by his character the same submission. A resolution seems to have been taken to insist upon all the ancient privileges of Parliament, together with all the legal liberties of the subject; and if these should be found incompatible with the old prerogatives of the Crown, or the new pretensions of the Tudor dynasty, to make the King yield to his people, and not the people to the King.

James soon had ample occasion to remark the disposition of his subjects. Not all the rejoicings which attended his march, nor the new honours which he so lavishly threw away, could disguise the truth. A petition from upwards of a thousand clergymen of the Puritan persuasion was presented to the King on his road to London, praying for 'a reformation in the church service, ministry, livings, and discipline.' He issued writs

for the calling of a Parliament, accompanied with instructions to the people what kind of persons they should elect, commanding them not to choose outlaws, and bidding them send the returns to his Court of Chancery, there to be examined and judged. In pursuance of these instructions, the election of a Sir Francis Goodwin, chosen for the county of Buckingham, an outlaw, was declared to be void; a new writ was issued from the Chancery, and Sir John Fortescue was returned in his room. The Commons declared the election of Sir Francis Goodwin to be valid, and that all matters concerning the election of Members of Parliament were cognizable in the House of Commons only. This had been an old subject of dispute with Queen Elizabeth; the precedents were assertions on both sides, and no decisive conclusion. The Commons had voted that the 'discussing and adjudging of such like differences belonged only to the House;' and had passed a resolution that outlaws might be elected: the Judges had declared that they could not, and Queen Elizabeth had complained to her last House of Commons that outlaws were admitted. James, after contesting the point, proposed that both Goodwin and Fortescue should be set aside, and a new writ should be issued *by the warrant of*

the House. The right of the Commons to decide in all matters of election was thus admitted.

In the same Parliament, a warden of the Fleet was arrested by the House for having imprisoned a member; a compensation for wardship and purveyance was proposed; and a conference with the Lords was desired on the subject of religion. The instructions given by the Commons to those who were to conduct the conference are remarkable. A relaxation is desired for such as were unable to reconcile themselves to the cross in baptism, the ring in marriage, and the surplice; but on the subjects of faith, and the sacraments, every person in the kingdom is to be required by Parliament to conform to the law of uniformity. So far were the ideas of these reformers from real toleration! James was alarmed at each and all of the pretensions of the Commons, and there remains a draft of a very able address reported from a Select Committee of that House (though never adopted by the House itself), complaining of the misinformation he had received, and entering at large into every subject which had been discussed. They mention the ill-treatment they had received on the subject of their privileges during the latter years of Queen Elizabeth; attribute their acquiescence

to respect for her sex and age; and express their surprise and sorrow that in this first Parliament of King James, their rights should have been more invaded than ever.* The session ended without any decisive result: except tonnage and poundage, the King obtained no supply; and except on the question of new writs, the Commons got no redress.

The alarm of the Gunpowder Plot produced plentiful grants to the King. At the end of December, 1609, James dissolved his Parliament, and with the exception of a session of two months in 1614, more than ten years passed over without any sitting of Parliament. Forced loans, arbitrary taxes from private persons, and new monopolies, supplied the wants of his treasury in the interval. At length, in the year 1620, a Parliament met, to which every Englishman ought to look back with reverence. Having first voted the King two subsidies, and having discouraged all recurrence to past complaints, they set themselves vigorously to examine the present grievances of the subject. James adjourned them, and imprisoned Sir Edwin Sandys, one of their most useful members. Undismayed by

* Mr. Hume has laboured, but without success, to weaken the authority of this document, which, it seems, makes against his theory.

this step, they petitioned the King, on his next meeting, to defend his son-in-law the Elector Palatine against the Catholic interest of Europe, to break off the match of his son with Spain, and to turn his sword against that formidable power. James threatened the Commons with punishment: they maintained their privileges: he told them they were derived 'from the grace and permission of our ancestors and us.' To this pretension they returned the following memorable answer:—

'The Commons, now assembled in Parliament, being justly occasioned thereunto, concerning sundry liberties, franchises, privileges, and jurisdictions of Parliament, do make this protestation following:—That the liberties, franchises, privileges, and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England,; and the arduous and urgent affairs concerning the King, State, and the defence of the realm, and of the Church of England, and the making and maintenance of laws, and redress of mischiefs and grievances, which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament; and that in the handling and proceeding of those businesses, every member of the House hath, and

of right ought to have, freedom of speech, to propound, treat, reason, and bring to conclusion the same; that the Commons in Parliament have like liberty and freedom to treat of those matters, in such order, as in their judgments shall seem fittest; and that every such member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the House itself) for or concerning any bill, speaking, reasoning, or declaring of any matter or matters, touching the Parliament, or Parliament business; and that if any of the said members be complained of and questioned for anything said or done in Parliament, the same is to be showed to the King, by the advice and assent of all the Commons assembled in Parliament, before the King give credence to any private information.'

James, greatly wroth at this proceeding, sent for the Journal of the House of Commons to his council, and tore out the protestation with his own hand. He dissolved the Parliament; he imprisoned Coke, Selden, Pym, Phillips, and Mallory,* all members of the dissolved House of

* The people of England should have these names by heart. They were, with John Hampden and Oliver Cromwell, the founders of the liberties of the county.

Commons. He was not aware that the force of the protestation he tore out was not in the parchment or the letters of a book, but in the hearts and minds of his subjects; and he little expected that, by confining the persons of a few commoners, he was preparing the imprisonment and death of his son.

If we look at the position of the adverse parties at this time, we shall see that James was attempting, most unseasonably, a new mode of government. The nature of the Gothic monarchies was generally the same. The king, who had first ruled together with his people in rude harmony, came, in time, to exercise certain powers of government which he called prerogative; and the people who, in early times, assembled on every occasion to discuss grievances, and laws, and treaties, became in the progress of civilization divided into cities, and had their privileges set down in general and particular charters which they called their liberties. Both prerogative and privilege were liable to misconstruction, and sometimes overflowed their banks; but the king always spoke with respect of the liberties of his subjects, even when he illegally imprisoned their persons; and the people professed their veneration for monarchy, even when

they deposed their king. Queen Elizabeth, acting in this spirit, abjured the notion of infringing the rights of her subjects, at the same time that she occasionally encroached upon, and always narrowly confined the rights she professed to maintain. She acknowledged the *liberties* of the people without doubt or hesitation, but made use of her own dictionary for the definition of the term. James attempted a new system: he denied the existence of privileges altogether, except by sufferance; and without possessing the wisdom of an ordinary man, he claimed, in an inquiring age, the infallibility of the Deity. 'As it is atheism and blasphemy,' he said, 'in a creature to dispute what the Deity may do, so it is presumption and sedition in a subject to dispute what a king may do in the height of his power. Good Christians will be content with God's will, revealed in His word; and good subjects will rest in the King's will, revealed in his law.' Such was the impious folly of James! His sayings do him credit as a wit; his learning was not unbecoming a scholar; but his conduct made him contemptible as a king. How vain then to pretend that all the ancient privileges of the English nation were to depend upon his nod

CHAPTER VII.

CHARLES THE FIRST.

'There was ambition, there was sedition, there was violence; but no man shall persuade me that it was not the cause of liberty on one side, and of tyranny on the other.'—*Lord Chatham, quoted by Grattan (Letter to the Citizens of Dublin,* 1797.)

The accession of Charles I. found the nation engaged in hostilities with Spain, which was then esteemed the most powerful monarchy in Europe.

An attempt has been made to throw upon the first Parliament of Charles the charge of bad faith and want of generosity, because they did not, previously to all inquiry into grievances, grant to their young King a sufficient sum to enable him to prosecute with due vigour the war which they had brought on by their advice and encouragement. Now, even if it were true that the Commons were the authors of the war, still it would not follow that they did wrong in considering the abuses of

the executive government, before they supplied it with fresh means of setting law and economy at defiance. A rigid inquiry into the public means and the public expenses was at all events justly due to the nation, of which they were the representatives. In point of fact, however, the war was not theirs, but Buckingham's; it had been refused to the parliamentary address of the people, and granted to the private pique of the favourite.*

In considering the requests of the House of Commons from the commencement of the reign, we must never lose sight, as they never lost sight, of the ancient statutes of the realm. By Magna Charta it is established, that no freeman is to be imprisoned, or otherwise injured, but by the judgment of his peers, or the law of the land: therefore the judgments of the Star Chamber, and the commitments by the Sovereign's pleasure, were anomalous innovations. By a law of Edward I. no taxes were to be raised except by the authority of Parliament; therefore forced loans, benevolences, and mono-

* 'Instead of judiciously mollifying the misunderstandings betwixt the two Houses and the King, he (Buckingham) unadvisedly (for in Spain he had received some affronts upon some arrears he had made) runs the King into a war with that nation.'—*Warwick's Memoirs*, p. 13. (Sir Philip Warwick was a courtier.)

polies, were illegal. By two laws of Edward III. Parliaments were ordained to be held once a year or oftener; therefore an attempt to govern without the regular advice and continual authority of Parliament, amounted to a subversion of the established constitution of the State. Nor is it to any purpose, even as an *argumentum ad hominem*, to say that frequent violations of all these laws took place under the reign of particular sovereigns, especially the Tudors. The uninterrupted practice of trial by jury, the solemn usage of granting supplies in Parliament, and the frequent meetings of that high court, prove that none of these rights had become obsolete, and that the exertions of prerogative incompatible with them were irregularities to be amended, and not examples to be followed.

The great stand made by Hampden and his associates, against the payment of ship-money, was the immediate cause which prevented the establishment of arbitrary monarchy in England, as in France and Spain. He refused to pay to the king the sum of twenty shillings: the judges in Westminster Hall decided against him, but the country was roused, and overbalanced by their sympathy the judgment of a court of law. Let us hear the testimony of Lord Clarendon on this subject; his

reasoning is so pregnant, that I make no apology for inserting it at length. 'Lastly, for a spring and magazine that should have no bottom, and for an everlasting supply of all occasions, a writ was framed in a form of law, and directed to the sheriff of every county of England, "to provide a ship of war for the king's service, and to send it, amply provided and fitted, by such a day, to such a place;" and with that writ were sent to each sheriff instructions, that, "instead of a ship, he should levy upon his county such a sum of money, and return the same to the Treasurer of the Navy for his Majesty's use," with direction in what manner he should proceed against such as refused: and from hence that tax had the denomination of *ship-money*, a word of a lasting sound in the memory of this kingdom, by which for some years really accrued the yearly sum of £200,000 to the king's coffers: and it was in truth the only project that was accounted to his own service. And, after the continued receipt of it for about four years together, it was at last (upon the refusal of a private gentleman to pay twenty or thirty shillings as his share), with great solemnity, publicly argued before all the judges of England in the Exchequer Chamber, and by much the major part of them the king's right to impose

asserted, and the tax adjudged lawful; which judgment proved of more advantage and credit to the gentleman condemned (Mr. Hampden) than to the King's service.

'For the better support of these extraordinary ways, and to protect the agents and instruments who must be employed in them, and to discountenance and suppress all bold inquirers and opposers, the Council Table and Star Chamber enlarge their jurisdictions to a vast extent, "holding" (as Thucydides said of the Athenians) "for honourable that which pleased, and for just that which profited;" and being the same persons in several rooms, grew both courts of law to determine right, and courts of revenue to bring money into the treasury; the Council Table by proclamations enjoining to the people what was not enjoined by the law, and prohibiting that which was not prohibited, and the Star Chamber censuring the breach and disobedience to those proclamations by very great fines and imprisonment, so that any disrespect to any acts of state, or to the persons of statesmen, was in no time more penal, and those foundations of right by which men valued their security, to the apprehension and understanding of wise men, never more in danger to be destroyed.

'And here I cannot but again take the liberty to say, that the circumstances and proceedings in those new extraordinary cases, stratagems, and impositions, were very unpolitic, and even destructive to the services intended. And if the business of ship-money, being an imposition by the State, under the notion of necessity, upon a prospect of danger, which private persons could not modestly think themselves qualified to discern, had been managed in the same extraordinary way as the royal loan (which was the imposing the five subsidies after the second Parliament spoken of before) was, men would much easier have submitted to it, as it is notoriously known that pressure was borne with much more cheerfulness before the judgment for the King than ever it was after; men before pleasing themselves with doing somewhat for the King's service, as a testimony of their affection, which they were not bound to do, many really believing the necessity, and therefore thinking the burthen reasonable; others observing that the advantage to the King was of importance, when the damage to them was not considerable, and all assuring themselves that when they should be weary, or unwilling to continue the payment, they might resort to the law for relief, and find it. But when they

heard this demanded in a court of law, as a right, and found it, by sworn judges of the law, adjudged so, upon such grounds and reasons as every stander-by was able to swear was not law, and so had lost the pleasure and delight of being kind and dutiful to the King, and instead of giving, were required to pay, and by a logic that left no man anything which he might call his own; they no more looked upon it as the case of one man, but the case of the kingdom, nor as an imposition laid upon them by the King, but by the judges, which they thought themselves bound in conscience to the public justice not to submit to. It was an observation long ago by Thucydides, "that men are more passionate for much injustice than for violence, because," says he, "the one coming as from an equal seems rapine, when the other, proceeding from one stronger, is but the effect of necessity." So, when ship-money was transacted at the Council Board, they looked upon it as a work of that power they were all obliged to trust, and an effect of that foresight they were naturally to rely upon. Imminent necessity and public safety were convincing persuasions; and it might not seem of apparent ill consequence to them, that upon an emergent occasion the regal power should fill up an *hiatus*, or supply an impo-

tency in the law. But when they saw in a court of law (that law, that gave them title to, and possession of, all that they had) reason of state urged as elements of law, judges as sharp-sighted as secretaries of state, and in the mysteries of state; judgment of law grounded upon matter of fact, of which there was neither inquiry nor proof, and no reason given for the payment of the thirty shillings in question, but what included the estates of all the standers-by; they had no reason to hope that doctrine, or the promoters of it, would be contained within any bounds, and it was no wonder that they, who had so little reason to be pleased with their own condition, were no less solicitous for, or apprehensive of, the inconveniences that might attend any alteration.

'And here the damage and mischief cannot be expressed that the Crown and State sustained by the deserved reproach and infamy that attended the judges, by being made use of in this and like acts of power, there being no possibility to preserve the dignity, reverence, and estimation of the laws themselves, but by the integrity and innocency of the judges. And no question, as the exorbitancy of the House of Commons, in the next Parliament, proceeded principally from their contempt of the

laws, and that contempt from the scandal of that judgment: so the concurrence of the House of Peers in that fury, can be imputed to no one thing more than to the irreverence and scorn the judges were justly in, who had been always before looked upon there as the oracles of the law, and the best guides to assist that House in their opinions and actions. And the Lords now thought themselves excused for swerving from the rules and customs of their predecessors (who, in altering and making of laws, in judging of things and persons, had always observed the advice and judgment of those sages) in not asking questions of those whom they knew nobody would believe, thinking it a just reproach upon them (who out of their courtship had submitted the difficulties and mysteries of the law, to be measured by the standard of what they called general reason, and explained by the wisdom of State) that they themselves should make use of the licence, which the others had taught them, and determine that to be law, which they thought to be reasonable or found to be convenient. If these men had preserved the simplicity of their ancestors, in severely and strictly defending the laws, other men had observed the modesty of theirs, in humbly and dutifully obeying them.

'Upon this consideration, it is very observable that, in the wisdom of former times, when the prerogative went highest (as very often it hath been swollen above any pitch we have seen it at in our times), never any court of law, very seldom any judge, or lawyer of reputation, was called upon to assist in an act of power; the Crown well knowing the moment of keeping those the objects of reverence and veneration with the people; and that though it might sometimes make sallies upon them by the prerogative, yet the law would keep the people from any invasion of it, and that the king could never suffer, whilst the law and the judges were looked upon by the subject, as the asylum for their liberties and security. And therefore you shall find the policy of many princes, hath endured as sharp animadversions and reprehensions from the judges of the law, as their piety hath from the bishops of the church; as having no less influence upon the people, under the reputation of justice, by the one, than under the ties of conscience and religion, by the other. To extend this consideration of the form and circumstances of proceeding in cases of an unusual nature a little further; as it may be most behoveful for princes, in matters of grace and honour, and in conferring of favours upon

their people, to transact the same as publicly as may be, and, by themselves or their ministers, to dilate upon it, and improve the lustre by any addition, or eloquence of speech (where, it may be, every kind word, especially from the prince himself, is looked upon as a new bounty); so it is as requisite in matters of judgment, punishment, and censure upon things or persons (especially when the case, in the nature of it, is unusual, and the rules in judging as extraordinary) that the same be transacted as privately, and with as little noise and pomp of words, as may be. For (as damage is much easier borne, and submitted to by generous minds, than disgrace) in the business of ship-money, and many other cases in the Star Chamber and at the Council Board, there were many impertinencies, incongruities, and insolencies, in the speeches and orations of the judges, much more offensive, and much more scandalous, than the judgments and sentences themselves. Besides that, men's minds and understandings were more instructed to discern the consequence of things, which before they considered not. And undoubtedly my Lord Finch's speech in the Exchequer Chamber made ship-money much more abhorred and formidable than all the commitments by the Council Table, and all

the distresses taken by the sheriffs in England: the major part of men (besides the common unconcernedness in other men's sufferings) looking upon those proceedings with a kind of applause to themselves, to see other men punished for not doing as they had done; which delight was quickly determined, when they found their own interest, by the unnecessary logic of that argument, no less concluded than Mr. Hampden's.

'He hath been but an ill observer of the passages of those times we speak of, who hath not seen many sober men, who have been clearly satisfied with the conveniency, necessity, and justice of many sentences, depart notwithstanding extremely offended and scandalized with the grounds, reasons, and expressions of those who inflicted those censures; when they found themselves, thinking to be only spectators of other men's sufferings, by some unnecessary inference or declaration, in probable danger to become the next delinquents.'

In this able summary we have a clear statement of the causes of disagreement between the King and his people, a demonstration of the tyranny as well as the folly of the King, and a satisfactory explanation of the distrust of the people.

Lord Strafford, most unfortunately for himself,

for his king, and his country, fell out of the ranks of the friends of liberty, and encouraged Charles to persist in a resistance, which, perhaps, he might otherwise have abandoned. Devoid of all public principle, and the slave of his malignant passions, even the patriotism of Strafford is to be attributed to his animosity to the Duke of Buckingham. With a mixture of baseness and boldness seldom equalled, he made himself the tool of his personal enemy, for the purpose of breaking down all the safeguards of the subject, contained in that petition of right, which he had been among the foremost to ask for and obtain. He had not the excuse of saying that he opposed new pretensions of the Commons, or that he had left his friends when they went beyond the bounds of legality and loyalty. The measures in which he assisted were violations of those laws which it was his glory to have recognised and established. He had himself said, 'We must vindicate:—what? new things? no:—our ancient, legal, and vital liberties, by reinforcing the laws enacted by our ancestors; by setting such a stamp upon them, THAT NO LICENTIOUS SPIRIT SHALL DARE HENCEFORTH TO INVADE THEM.' When Deputy in Ireland, he made large promises to the Roman Catholics to serve the King's present convenience, without any

intention of keeping them. He solicited an earldom, as the reward of his services, with an importunity that shows his ambition to have been of the meanest kind. When in the north, he persecuted with the utmost cruelty a Sir David Foulis, who had omitted to pay him some trifling mark of respect.* His conduct to Lord Mountnorris in Ireland was of the same kind. Upon the whole, he was a violent, unprincipled man, destitute of any elevation of soul; for his request to the King to let him die can hardly be thought sincere; and there can be little doubt that, till the end of his career, he expected to rise to supreme power by pressing his foot upon the necks of the people. The intrepidity of his character, his powers of eloquence, the virtues of his private life, and, above all, the unjust manner in which he was condemned to death, have rescued his name from that abhorrence with which every lover of his country would otherwise have regarded it. The execution of Strafford casts a stain upon all parties in the state. The House of Commons were instigated by passion; the House of Lords acted from fear; and Charles, from some motive or other, which, at all events, was not the right one. The admission of the mob to overawe the deliberation of

* Macdiarmid's Lives, vol. ii. p. 121.

Parliament was a sure sign that law was about to be subverted.

In a contest between a king who refuses any limitation of his prerogative, and a people who require it, there can be no equitable agreement. The ordinary authority of a limited king, the power of calling out an armed force, of proroguing and dissolving Parliament, cannot be entrusted to a sovereign whose main object it is to destroy, by means of a party, all limitation. William III., Anne, and the first sovereigns of the House of Brunswick, might be safely entrusted with the prerogative, because no party in the nation wished to see arbitrary power in their hands; but Charles I. could not, because the Cavaliers would have been unanimous in repealing the restrictions imposed by Parliament. Hence, when the popular party had provided sufficient checks for the people against a king, they were obliged to devise fresh ones against King Charles. After the plot of the royalists in the army, and still more when war had actually commenced, they were forced to ask for securities unnecessary and improper in ordinary times. This forms the only justification of the law respecting the militia, the bill for continuing the Parliament, and the articles of Uxbridge. It was too much to

expect that the victorious party should lay down their arms, quietly permitting the liberties they had wrested from the Crown to be again surrendered by a packed Parliament; and their own lives to be at the mercy of a king to whom the power of the sword had been again entrusted. The difficulty was inseparable from the case. The king's prerogative is so great, that nothing but the established opinion of the whole nation can prevent his absorbing every other authority in the State.

The events of the reign of Charles, if we apply the principle I have laid down, are not difficult to account for. The King commenced by quarrelling with Parliaments, and by an attempt to raise money without their authority, punishing at the same time in an arbitrary manner all who ventured to speak or write in behalf of the ancient liberties of their country. In this career he found, in high stations, and even on the bench of judges, willing and unprincipled instruments. At length he was obliged to call a Parliament. They reformed abuses, punished the tools of tyranny, and insisted upon keeping in their own hands the armed force of the country, lest the King should use the first moment after the dissolution of Parliament to re-establish his illegal power. Charles

preferred trying the chance of war to agreeing to these conditions. In the course of the war, his papers, taken at the battle of Naseby, convinced the Parliamentary party that any concessions he might make would be, in his mind, concessions to power and not to right, and that he would think himself entitled, if he should ever have the means, to repossess himself of his former authority. It there came to light, that, at the time when he treated with the two Houses, he entered a protest in the council book declaring that they were not a Parliament, in the face of his own designation of them as such. Hence it appeared clear, that he thought himself at liberty to use any means to re-
" acquire that absolute power which he considered his birthright. And here, in my mind, was the error of Lord Clarendon and the constitutional royalists. Literally their proclamations and proposals were more conformable to the Constitution than those of their adversaries; it is evident that in their proposed terms of peace, the Parliament went beyond the limits to which the ancient laws of the kingdom confined them, and that they proposed to bind the prerogative of Charles more closely than precedent and example, and legal rule would justify. But if we pass from the letter to the spirit

of the controversy, we shall see that the Parliament were endeavouring, by new restrictions on royal power, to obtain a necessary security for the performance of the old, and that the King was attempting, by the offer of plausible terms, to get in his hands the power of destroying all opponents, and breaking down every barrier to his will. The very conscience of Charles ordered him to deceive his enemies and make himself absolute.

When the civil war was at an end, and Charles was defeated by his subjects, a new party had arisen, who went a step beyond the Presbyterians, both in religion and politics. The toleration which the Presbyterians had originally asked, in matters of dress and ceremonial, the Independents wished to extend to faith and doctrine, and were thus the earliest advocates of religious liberty. The political freedom which the Presbyterians hoped to enjoy under the ancient kingly government of England, the Independents thought would best be secured by a republican constitution. Their views with respect to the King, were tinged by the most erroneous notions, drawn from Scripture. They imagined the Sovereign ought to die, that the sins of the war might be expiated by him, and not by them. Ludlow, in vindication of the King's

execution, quotes, with self-applause, a passage from the Book of Numbers:—'That blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.' He continues, 'And, therefore, I could not consent to the counsels of those who were contented to leave the guilt of so much blood upon the nation, and thereby to draw down the just vengeance of God upon all; when it was most evident that the war had been occasioned by the invasion of our rights, and open breach of our laws and constitution on the King's part.'* This reason, if good for any thing, makes it not only the right but the duty of a party victorious in civil war, to put to death their adversaries in cold blood. Strange infatuation!

Charles fell a sacrifice at last, because Cromwell had lost his popularity by negotiating with him, and wished to regain his credit with his army. He had found reason to suspect, in the course of the negotiation, that Charles had no real intention of being reconciled with him, and that the democratic troops whom he commanded were ready to break out into mutiny in consequence of his supposed apostasy. His reconciliation was written in the

* Ludlow's Memoirs, i. 267.

King's blood. Machiavel, in a chapter in which he shows, 'that a people accustomed to lived under a prince, if by any accident it becomes free, with difficulty preserves its liberty,' says that, 'for the difficulties and evils which must be encountered, there is no more powerful, or more effectual, or more salutary, or more necessary remedy than to put to death the sons of Brutus,' that is to say, to give a striking example of severity against those who would be the chiefs of a counter-revolution.* Such, no doubt, was the manner in which Cromwell viewed the death of Charles. It put an end to all hesitation, broke the spirit of the royalists, and pledged him for ever to the enemies of the Stuarts.

By the nation at large the capital punishment of the King was not demanded, and very soon lamented. When living, he was a baffled tyrant; when dead, a royal martyr.

Charles was an obstinate, prejudiced, and foolish man, possessed of considerable talents, exempt from most vices, and possessing but few virtues. In politics he was a spoiled child, and lost his temper when he was contradicted. Even when such men as Lord Falkland and Mr. Hyde consented to be

* See Note (D) at the end of the volume.

his advisers, he attempted, without consulting them, to seize the Five Members. Had he succeeded, he would have had Pym and Hampden convicted and executed, as his son convicted and executed Russell and Sidney. Like his son, too, he would never have summoned another Parliament. But as the Queen betrayed his secret to Lady Carlisle, and Lady Carlisle to Pym, Pym and Hampden saved their lives, and saw that their only chance lay in arms, and victory.

The fate of the Parliament was much more important to the State than that of the King. From the moment they were obliged to raise an army, their independence was in danger. The exclusion of the eleven members was an act of force, destructive of legal government. The diminution of their numbers, till at last they consisted of not more than one hundred, and often less; their subordination to military members; and their taking refuge with the army, were the preludes to their final exclusion and dissolution. The minds of men, which had been led into the war by reverence and attachment to legal forms and established precedents, were now left without star or compass to guide them. Many, no doubt, had supposed that a war against Charles I. was, like a war against Henry III., a

proper method of seeking a redress of grievances. They imagined that, after some contest, the King would yield to his subjects in arms, and consent to resettle the nation. But when they found all established authority subverted, all government made a matter of question and conjecture, they knew not where to look for liberty or for law. In their utter inability to remedy this confusion, they turned their eyes to the strongest, and sought protection for their property and their lives. Thus, the attempt to bring human institutions at once to perfection, to get all the protection, without any of the oppression of authority, and to make every law the expression of exact truth and justice, ended in a recurrence to the rudest invention of a warlike tribe.

CHAPTER VIII.

CAUSES OF THE DISSOLUTION OF THE ENGLISH FORM OF GOVERNMENT UNDER CHARLES THE FIRST.

'Cunctas nationes et urbes, populus, aut primores, aut singuli regunt; delecta ex his et constituta reipublicæ forma laudari facilius quàm evenire, vel, si evenit, haud diuturna esse potest.'—*Tacitus.*

SUCH was the deliberate judgment of Tacitus; a judgment, indeed, contradicted by the event, but which nevertheless is marked with the utmost perfection of thought, to which speculative reasoning could reach. Indeed, the history of the English government, whilst it finally disproves, affords, in its course, ample justification for the opinion of Tacitus. Let us first consider what, in his profound mind, must have struck him as an obstacle to the success of a constitution made up of monarchy, aristocracy, and democracy. Was it the difficulty of forming a balance between the three powers? Surely not. Any schemer may lay out the plan of

a constitution, in which the three powers shall each possess the authority, which in theory it ought to have. Indeed, there is scarcely any constitution which a man of sense can draw up that will not appear more plausible in this respect than the English. What more absurd, *à priori*, than that the King should have the sole power of making peace and war, whilst the Commons have the sole power of granting money?

It is not then the difficulty of balancing powers which has been overcome by the successful refutation our history affords to the dictum of Tacitus. The grand problem which has been solved is, how the three powers shall come into action without disturbance or convulsion. Many a workman can make an automaton; but not every one can make him play at chess. More than one sculptor can form a beautiful statue; none but Prometheus could give it life. The first disturbance which is likely to occur in such a constitution as ours, is a collision between the King, as sovereign, and Parliament formed of Lords and Commons, considered as his advisers. The King, by the Constitution, has, and must have, the power of naming his own servants, who are to carry on the business of the executive government. But if these servants violate the laws,

betray the cause, mistake the interests, or squander the blood of their country, it is as certain that the great council of the nation must have the power of demanding and enforcing their dismissal. Two such opposite pretensions have naturally given rise to contest and calamity.

In the reigns of Henry III., Edward II., and Richard II., the misrule of the King's servants led to the total subversion of his authority; and on more than one occasion, commissioners were appointed by Parliament, who exercised all the prerogatives which the law has placed in the King. Such provisions amount to a revolution in the State for the time being.

After the accession of the House of Tudor, another kind of revolution took place; and the King, in his turn, swallowed up the powers of Parliament.

When Charles I. and his people began their dissensions, the great chasm, which separated one part of the Constitution from another, again opened, and threatened destruction to the State itself. The first opposition party, afterwards called the Presbyterians, perceived the difficulty, and they imagined the method of solving it since so successfully adopted. Their expedient for ensuring a peace-

able and long duration to our limited monarchy was, that the friends of the people should become the ministers of the Crown. Charles accepted the proposal, and named the persons to be promoted; but was soon disgusted with their advice, which ill accorded with his own arbitrary notions. He plunged rashly into a civil war, and it soon became too late to expect accommodation. New politicians naturally arose, who maintained that it was folly to expend so much blood for the uncertain hope of the King's sanction to popular men and popular measures, when equal benefits might be secured by abolishing the kingly office altogether. Thus the prophecy of Tacitus was again accomplished; the nobles had overwhelmed the King and the people; the King had domineered over the nobles and the people; and now the people extinguished the King and the nobles. The three powers of the realm, although each had a legal right to its portion of authority, were still confounded, trampling upon, and triumphing over one another. The Constitution was still in its chaos. The hour, in which the elements were to be parted; in which variety and contrast were to subsist without disorder; when the King and the Commons were to separate from, and yet support each other, was not yet arrived.

At length, however, William III., Queen Anne, and George I. understood that harmony could only be obtained by giving the confidence of the Sovereign, as ministers, to men who had already obtained the confidence of the House of Commons as leaders. The House of Stuart refused this essential condition, and lost the crown; the House of Hanover complied with it, and may they long occupy the throne!

CHAPTER IX.

CROMWELL, CHARLES THE SECOND, AND JAMES THE SECOND.

'But certainly it can never be worth the scratch of a finger to remove a single person, acting by an arbitrary power, in order to set up another with the same unlimited authority.'—*Ludlow.*

CROMWELL did much for his country. He augmented her naval glory, and made her name formidable to all the legitimate sovereigns, to whom his birth was a subject of derision: the smile on their faces was checked by the terror in their hearts. He made use of this wholesome intimidation to secure the liberty of foreign Protestants; and before he died he perceived the danger to Europe from the growth of the French power, which he thenceforth determined to restrain. At home he held the balance, upon the whole, evenly and steadily; he gave to no sect the preponderance of State favour; and were it not that the questionable nature of his claim provoked rebellion, and

made severity necessary to him, he would not have been a harsh ruler. Many would admire his character had he been born a sovereign, and some would praise him with more cordiality had he never become one.

The quarrels between the army and the Parliament, and the generals of the army among themselves, resemble more nearly the dissensions between the Senate and the soldiery of Rome on the choice of an Emperor, than anything in modern history. They were the obvious preludes of a restoration. The Restoration was in its turn naturally the presage of cruel executions, of violated faith, of broken promises, of gratuitous confidence, of transient joy, and bitter disappointment. The death of Sir Harry Vane disgraced both Clarendon and Charles, and is one of the most cruel and perfidious acts in English story. Nor in the course of a long reign did the King perform anything to atone for the vengeance of the exile. He trampled on the rights, and shed the best blood of the nation, from which he had received the crown: he crouched at the feet of France, at a time when, of all others, England ought to have resisted French ambition; and thus made himself odious as a tyrant, only to become contemptible as a slave. Yet the Restora-

tion once determined upon, there is much to be said for those who have been constantly the objects of censure for bringing in the King without conditions. The best security for liberty was, that the King could have no revenue without the consent of Parliament: if that power were wisely reserved, no condition was necessary; if it were improvidently parted with, none could be effectual. Clarendon saw this, and did his duty to his country. James also saw it, and hated Clarendon for his conduct. Nor is the subsequent despotism of Charles any proof of the improvidence of those who restored him. The pension from Louis XIV. was a resource which set at defiance all limitations on kingly power: had William III. accepted pay from the French king, he might have laughed at the remonstrances of his Parliament.

The characters of Charles II. and Shaftesbury, the one indolent and careless, the other violent and rash, both inconsistent and unprincipled, gave a variegated colour to the whole reign. A profligate king, a religious people; excess of tyranny, excess of faction; the worst of governments, the best of laws; the triumph of party, the victory of despotism, are all to be found in this short period. It is difficult to say for what reason Charles, a witty and heart

less man of pleasure, embarked in the vast undertaking of making himself absolute. Perhaps his easy temper made him yield to the suggestions of his brother; perhaps he merely consented to the advice of his courtiers. The ready way of accomplishing this design, once adopted, was, as he conceived, to obtain money and troops from France. And as his father's throne had been overturned by religious fanaticism, he proposed to lay the foundation of his own upon a religion of blind obedience. The scheme not running on smoothly, however, he gave it up, partly from laziness, and partly from prudence,—contenting himself with charitable donations from France, from time to time. The virulent opposition of Shaftesbury, and the attempt to exclude his brother from the throne, again roused him to exertion; and the discovery of the Rye House Plot afforded him a tolerable pretext for ridding himself of all his considerable enemies. Thus, without activity or anxiety, by merely taking advantage of events as they arose, he procured for himself an authority which those of his family who made kingcraft their occupation, never possessed. He subdued the liberties of England, because it gave him less trouble than to maintain them. But still, though unsuccessful, the men, who could pro-

pose and carry through the House of Commons a bill for the exclusion of the next heir from the throne, evinced a spirit of honesty and freedom which no hazard could quell. The Bill of Exclusion was the legal warning of the Revolution.

The reign of Charles II., as has been observed, was an era of bad government, but of good laws. The Act of Habeas Corpus was the greatest of these laws. It is the best security for liberty ever devised; but it must not be supposed that it was invented during this reign. The writ itself is old, and various laws mention and confirm it, but it never was made capable of certain application till the time of Charles II.; and even after that time, the island of St. Nicholas, in Plymouth harbour, continued to be used as a state prison, beyond the reach of law.

James formed his designs on a very different mould from those of his brother. Rash, obstinate, and bigoted, he settled in his own mind that he would make himself an arbitrary king, and the Roman Catholic religion the religion of the state. Which of these projects he intended to finish first, I own does not seem to me to be worth very anxious dispute, since it is very clear that both objects were in his view. He pursued them with that stupid obstinacy which is so frequently fatal to a

man without talent. His want of sense was accompanied, as it often is, with a want of heart; and as he could not himself reason, he felt no pity for those who could. His opinions appeared to his own mind infallible truths, and he knew no mode of convincing those who doubted, but by executions.

The faults of the House of Stuart may all be traced to the scholastic pedantry of James I. Generally speaking, these sovereigns were not tainted with the spontaneous cruelty, the unjust caprice, or the sordid fear, which go to the formation of a tyrant. But they were intimately persuaded that they were destined to inherit arbitrary power; and they went on inflicting taxes and fines, and confiscation, and death, from a bigoted persuasion of their own divine right to govern as they pleased. James I. drew this notion from the old civil lawyers, and their imitators in Italy and Germany. He bequeathed it to his son, who lost his head in consequence of his perseverance in maintaining it. His grandson James, in trying to carry it fully into execution, fell unpitied from the throne. The whole family have since been exiles, and the last male descendant of James II. died a cardinal at Rome. This was paying dear for the failure of an erroneous theory; but England would have paid a still dearer price had it succeeded.

CHAPTER X.

THE REVOLUTION.

'He who wishes to reform an ancient state, and constitute it into a free country, ought to retain at least the shadow of the old forms.'—*Machiavel.*

THERE are few examples of revolutions which have led to immediate good. This consideration ought to induce men who have any influence over their countrymen to be very cautious how they engage in projects which may put to hazard all that exists, unless they have a very sure prospect of obtaining what is proposed.

The Revolution of 1688 appears to my mind the perfection of boldness, and of prudence.

The Tory party in general were not so much alarmed at the subversion of liberty, as at the innovations introduced in religion. 'Church and King,' in the order they are used, was their motto and their faith. In their anxiety to preserve the

Church, they appealed to the Prince of Orange; but they never intended he should supplant the legitimate King. The Earl of Nottingham proposed in the House of Lords that the Prince of Orange should be regent; the Duchess of Marlborough bears testimony to her husband's surprise upon finding that the crown was to be transferred to William; and the Earl of Danby avowed, upon Sacheverell's trial, that it had never been his wish or expectation that James should be dethroned.

Had those who invited the Prince of Orange to England satisfied themselves with obliging James to call a parliament, the rest of his reign must have passed in continual jealousy. It would have been still more absurd to have given William the power, and James the title of king. That title, which is not the private patrimony of an individual, can only belong properly to the person who is qualified to exercise the office. The Princess of Orange being the nearest of blood (except the infant son of James), and a Protestant, the Prince of Orange (himself the nephew of James) was the fit person to be king. He had, besides, this merit in the eyes of the Whigs, that his right to the crown, and the right of the people to their liberties, were thence-

forth to be placed on the same foundation, and opposed to the same Pretender.*

The more violent of the Whigs were not satisfied with changing the dynasty. They looked to extensive reforms both in Church and State: they wished to change our ecclesiastical laws, and remodel the House of Commons. Others desired to abolish the monarchy, and constitute a republic. But the leaders of the Revolution knew, with Machiavel, that nothing so much tends to give stability to a change of government, as an adherence to old forms and venerated institutions. They knew that, to enter upon a discussion of new projects, however plausible, at such a moment, and in the face of a large adverse party, would expose their work to be presently overthrown, and could only lead to endless conflicts and unsatisfactory decisions. For these reasons, the leaders of the Revolution contented themselves with confirming, by solemn statute, all the ancient liberties of England, and protesting against those particular violations of them which had taken place in the late reign. Whether the

* Had the crown continued in the House of Stuart, it would have been, at the present day (1824), on the head of the King of Sardinia, descended from a daughter of the Duchess of Orleans, who was herself daughter of Charles I.

securities they took were sufficient to form the basis of a good government, or whether they were but half-measures, satisfying the eye, but not the appetite, we shall see in the following chapter.

It is curious to read the conferences between the Houses on the meaning of the words 'deserted' and 'abdicated;' and the debate in the Lords, whether or no there is an original contract between king and people. The notion of a tacit contract, by which the king and his subjects are to be guided in their relations with each other, is certainly not correct. The king, without any contract whatever, is bound to carry into execution the laws which are entrusted to his care. This is the simple duty of his office. But if at any time the people should require of him new liberties, he is bound to give them the species of government which the state of the nation, and the knowledge of the age, may demand. The foundation of every durable government is the common consent of the realm.

The notion of an original contract, however, was the theory of the friends of liberty in every part of Europe. The Spaniards had asserted it in the beginning of their contest with Charles V.; and, indeed, it had a foundation in the origin of the feudal governments. The only debate in the House

of Lords was between those who asserted the original contract and those who maintained the divine right of kings. In short, the question was, whether or no kings derived their power from the people. It was decided that they did; and the next resolution was, in substance, that James had abused that power, and had thereby become amenable to the nation. For such is the clear meaning of the vote of the two Houses, declaring that James, having broken the original contract between king and people, having violated the fundamental laws, and having withdrawn himself out of the kingdom, had abdicated the throne, and that the throne was thereby vacant. Nothing could be more creditable to the temper and justice of the English people than the calm discussion of this question—nothing more decisive of their wisdom and love of freedom than the judgment which they pronounced.

CHAPTER XI.

DEFINITIONS OF LIBERTY.

'The liberties of nations are from God and nature, not from kings.'—*Algernon Sidney.*

MANY definitions have been given of liberty. Most of these deserve no notice whatever; but there are two which, having been adopted by celebrated men, merit consideration. The first of these is the definition of the Roman civil lawyers, that liberty is the power of doing that which is not forbidden by the laws. The other is, that liberty is the power of doing all that we ought to be allowed to do. Of these two, it appears to me, the first includes too little, and the second too much. If liberty consists in being able to do what the law permits, a despotism, established by law, and which always works by law, is a free government. Napoleon, for instance, scarcely ever violated in France the laws he had made; these laws, however, were tyrannical.

But if no country is free except where no unjust prohibitions and no unnecessary penal laws are found, it is impossible to say that there has ever existed a free government. What shall we say, for instance, to that law of the Twelve Tables, by which it was enacted that insolvent debtors should be given up to their creditors, to be bound in fetters and cords; and by which, though not made slaves, they were liable to be treated with the same or greater harshness?* Indeed, what shall we say to the freedom of any democracy; for, have they not all passed laws measured by the rule of their own passions? Even England, whose governing power is formed expressly from a composition of conflicting forces, has admitted on her statute-book many an unjust and cruel enactment. A complete definition of liberty is perhaps impossible. Nor is liberty all of one kind. A nation may have one kind, and be quite deprived of another. The greatest advantages, however, which a community can procure to itself, by uniting under one government, may, perhaps, be comprehended under the titles of Civil Liberty, Personal Liberty, and Political Liberty.

By civil liberty, I mean the power of doing that, and that only, which is not forbidden by the laws.

* Adam, R. Antiq., p. 45. A. Gellius, N. A., l. 20, 1.

This definition comprehends the security of person and of property.

By personal liberty, I mean the power of doing that which in itself is harmless, as speaking or writing, and of which the abuse only is criminal. Eligibility to office may also be comprehended under this head.

By political liberty, I mean the acknowledged and legal right of the people to control their government, or to take a share in it.

Each of these kinds of liberty should be allowed to exist in as great a proportion as possible. They were all comprehended by Cromwell's representative under the names of 'the peace and security, the rights and privileges of the people.'

CHAPTER XII.

CIVIL LIBERTY.

'The laws of England are the birthright of the people thereof; and all the Kings and Queens who shall ascend the throne of this realm, ought to administer the government of the same, according to the said laws; and all their officers and ministers ought to serve them respectively according to the same.'—*Statute* 12 *&* 13 *Will. III. c.* 2.

CIVIL liberty comprehends the security of person and property. For if a man is only allowed to do that which the law permits, he is liable to punishment should he raise his hand against his neighbour in violation of law; and if he is free to do all that the law does not forbid, he cannot be called in question for a legal exercise of his rights.

'In walking over a large field with about thirty attendants and slaves, Hassan told the owner that he had done wrong in sowing the field with barley, as water-melons would have grown better. He then took some melon-seed out of his pocket,

and giving it to the man, said, 'You had better tear up the barley, and sow this.' As the barley was nearly ripe, the man, of course, excused himself from complying with the Kashef's command. 'Then I will sow them for you,' said the latter; and ordered his people immediately to tear up the crop, and lay out the field for the reception of the melon-seed. The boat was then loaded with the barley, and a family thus reduced to misery, in order that the governor might feed his horses and camels for three days on the barley-stalks.'* Every one must feel that, in a country where this could happen, there can be no security for property.

Tavernier tells us of a king of Persia, who ordered the heads of all the beasts he had killed in one day's chase to be set up in the form of a pyramid. When it was done, the architect came and told him that the pyramid was complete, with the exception of one large head for the summit. 'I think yours will do very well for that,' said the king; and to this brutal joke sacrificed an innocent man. In such a country there can be no security for life.

When Athens was in its splendour, there arose that detestable class of men, who gained their livelihood by informing against the best and

* Burckhardt's Travels in Nubia, vol. i. p. 94.

worthiest of their fellow-citizens, and holding out to the rapacity of a sovereign mob the temptation of a rich forfeiture. It should never be forgotten by those who are disposed to admire a democratic government, that the word *sycophant* had its origin in the most popular of all democracies.

Nicophemus and Aristophanes, public functionaries, were accused of malversation. On some change in the government, they were imprisoned, and secretly made away with without a trial. Their property was confiscated. The amount disappointing the greedy accusers, a prosecution was instituted against the brother of the widow of Aristophanes for embezzling the sum that was deficient. What is the language of his advocate upon his trial? An appeal to feelings of justice and generosity? No: he plainly intimates the rapacity of the judges. 'I know how difficult it will be,' he says, 'to refute the received opinion of the great riches of Nicophemus. The present scarcity of money in the city, and the wants of the treasury which the forfeiture has been calculated upon to supply, will operate against me.'*

During the reign of terror in France, men were put to death for relationship to suspected persons,

* Mitford's History of Greece, vol. v. p. 96.

for acquaintance with the condemned, for having wept at the death of the King, and a thousand vague and trivial offences.

Thus unlimited despotism and uncontrolled democracy are found to be equally unfavourable to the existence of civil liberty. The examples I have adduced are extreme cases; but in every state, where either the monarch, the aristocracy, or the multitude is allowed to have too much power, civil liberty is incomplete: that is to say, a subject of such a government cannot be sure that, even when he obeys all the laws, he may not be taxed or imprisoned by arbitrary mandate. Witness the gabelle and the Bastille of the French monarchy, the prisons of Venice, and the banishments of Florence. All these states were professedly under the government of laws, but to some of their citizens these laws were but a shield of paper. It may, however, generally be observed, that the violations of justice in a monarchy are more frequent; in a democracy, more striking. It seems more natural and tolerable that a king, revered as a kind of superior being, should oppress a slave, than that an assembly of freemen should maltreat an equal.

Let us now see how civil liberty is provided for in England. It is declared by the King, in *Magna*

Charta, the earliest and the best law upon our statute-book, that no freeman shall be any way destroyed, unless by the judgment of his peers, or the law of the land—'*Nullus liber homo aliquo modo destruatur, nisi per legale judicium parium suorum, aut per legem terræ.*' This admirable law, however, was frequently violated in times of disorder. It was renewed very frequently; but notwithstanding these renewals, and the claims of the Petition of Right, the subject had no effectual remedy against wrong, till a law of Charles II. provided means for an easy execution of the ancient writ of *Habeas Corpus*. This Act, well known by the name of the *Habeas Corpus* Act, commands, that upon written complaint from or on behalf of any person confined in prison, except on a charge of high treason or felony, the Lord Chancellor and the Judges shall, upon pain of forfeiting the sum of £500, deliver a writ, ordering him to be brought into court. The writ is to be delivered, and the prisoner is to be brought into court within twenty days; and if his offence is bailable, he is to be discharged upon offering bail, and entering into a recognizance to appear at his trial. If his offence is charged as treason or felony, and if the prosecution is not followed up within the second term after his com-

mitment, he is to be discharged. If no offence is specified in the warrant of commitment, his imprisonment is illegal, and he must be instantly discharged. Besides this protection, the Judges go into the country twice every year, with a commission of gaol-delivery, for clearing all the prisons. These securities, however, availed not against James II., who employed the island of St. Nicholas, in Plymouth harbour, for a State prison, in the same manner as Cromwell had before made use of the isle of Jersey. From the Revolution, however, the Act of *Habeas Corpus*, when in operation, has always been found of power to protect the subject. Of the suspensions of that law, I shall speak hereafter; I would now remark only, that the suspensions prove the practical efficacy of the *Habeas Corpus* Act, as much as the renewals of *Magna Charta* prove the practical inefficacy of that great compact. All the precautions taken to prevent arbitrary imprisonmeut, however, would be nothing if the trial when it took place could be unfairly and oppressively conducted. To prevent so dreadful an evil, we have the institution of trial by jury. The sheriff, a man of substance in the county, returns from twelve to twenty-three freeholders (usually men of property), to serve as a Grand Jury. To

them a bill of indictment, or accusation, is preferred; they examine witnesses in support of it; and unless they find probable grounds to proceed upon, the bill of indictment is thrown out, and the prosecution cannot be persisted in. To form the second, or Petty Jury, who are to try the cause, the sheriff returns the names of freeholders, or persons otherwise qualified according to law, to the number of not less than forty-eight, nor more than seventy-two. The names are put into a glass, and the twelve first drawn form the jury. At this period, the prisoner may challenge any whom he can reasonably accuse of partiality, or whose characters have been degraded by the sentence of a court of justice. In treason, he may challenge peremptorily thirty-five. When the trial is over, the twelve jurymen remain enclosed together without separating or conferring with others, till they can deliver a unanimous verdict.

Nothing can appear less perfect in theory than the institution of trial by jury. What can be more liable to abuse, it may be said, than the choice given to the sheriff, an officer appointed by the Crown? What more prejudicial to an accused person than the previous decision of twenty-three men of wealth and figure, formed upon hearing one

side of the question only? What more likely to create confusion of right and wrong, than to require a unanimous verdict, and thus make the guilt or innocence of a prisoner depend on the mental incapacity, the moral obstinacy, or even the physical strength of a single juror? These objections I shall not attempt to answer; the veneration which the English have for trial by jury, like the admiration they entertain for Shakespeare, must be taken as a practical proof of its excellence; and it would be as absurd to attempt to demonstrate that a people long free attribute their freedom to a slavish institution, as to endeavour, like Voltaire, to prove that a people long civilized admire barbarous and ridiculous poetry. It must be admitted, however, with respect to trial by jury, that it is liable to be perverted in bad times, and that the condemnation of Sidney was an act which equalled, if it did not surpass in violence, the attainder of Strafford. This institution, therefore, is rather an instrument of liberty in her prosperity, than a protector in her adversity; it is to be trusted as the companion, but not to be relied upon as the survivor of free parliaments, and a free press During the reigns of Henry VIII. and Charles II. juries were effectually perverted, and became the

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submissive organs of tyranny. But, since the Revolution, the general respect that has prevailed for right and justice, has prevented abuse, and, upon the whole, juries have kept the balance even between the safety of Government and the liberty of the subject.

Trial by jury leaves, properly speaking, but little power to the judge. When the trial is over, the judge recapitulates the evidence, and explains the law upon the subject. The decision upon the facts is left entirely to the jury. If they find the prisoner guilty, the judge pronounces the sentence affixed by law. This arrangement, the best ever imagined, leaves nothing to the judge but what is absolutely required, and cannot easily be abused. It is necessary, for the sake of the regularity and accuracy of judgments, that some one present should have that knowledge of the laws, which can only be acquired by long and exclusive study: and it is much better that he should speak on the trial, than that he should assist at the decision, for numbers are ready at the bar to observe lest he misrepresent the law.

Notwithstanding this proper division, juries, in the time of Charles II., were controlled and dictated to by court judges, who were appointed and

removed, in proportion to their subserviency. To prevent this abuse, an Act passed, early in the reign of King William, providing that judges should be appointed during good behaviour, and should be removable only by addresses from both Houses of Parliament,—an Act which completely answered its purpose of making the judicial power independent of the executive, and gave an authority to the name and character of an English judge, which it had never before possessed. We must not forget, however, that there is yet another security which is, perhaps, more valuable than any. The trial is public, and the accused is brought face to face with his accuser, before the country.

Security of property is also well provided for. By a law of Edward I. it was enacted, that no aids or taxes should be taken from the subject, but by common assent of the realm. What this means we shall see in a following chapter. It having been found, notwithstanding this law, that the King, by means of the Star Chamber, was able to impose arbitrary penalties, it was enacted in the law which abolished that tribunal, that it should not be lawful for the King in council, by English bill, or any arbitrary way whatsoever, to call in question the property of the subject.

The courts in Westminster Hall, the circuit of the judges in the country, the body of the magistrates, consisting of the principal gentlemen of the county in which they act, giving their perpetual attendance at home, and meeting in quarter and petty sessions to administer the law gratuitously,* are all instruments engaged in executing that noble article of the Great Charter:—'We will not deny, nor delay, nor sell right or justice to any one.' We have reason to rejoice in the observation of De Lolme, who remarked with pleasure, within the precincts of the King's residence at Windsor, inscribed in an enclosed space:—'Whoever trespasses on these grounds, will be prosecuted according to law,' thus claiming for the King the common security of the poorest cottager in the land. Nor has it been found, that the exalted station of the royal family has ever enabled them to trespass on the property, or disturb the private rights of individuals.†

* I have inserted this word, as we hear the unpaid magistrates so highly praised for disinterestedness. They have power, however, for their trouble, and a power which the barons of old struggled so hard to possess and exercise.

† See Note (E) at the end of the volume.

CHAPTER XIII.

PERSONAL LIBERTY.

'Methinks I see in my mind a noble and puissant nation rousing herself like a strong man after sleep, and shaking her invincible locks; methinks I see her as an eagle renewing her mighty youth, and kindling her undazzled eyes at the full mid-day beam, purging and unscaling her long-abused sight at the fountain itself of heavenly radiance, while the whole noise of timorous and flocking birds, with those also that love the twi-light, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms.' —*Milton.*

NEXT to civil liberty, in the order I have laid down, comes personal liberty. By personal liberty, I mean the freedom from restraint upon actions which are not criminal in themselves. The chief liberties of this class are the freedom of speaking and writing, and freedom of conscience in matters of religion. The absence of all exclusive personal privileges, such as signorial rights, exemption from taxes, monopoly of civil and military offices, must be reckoned also in this class; for that which is a privilege to one class of men is a restraint upon another.

The liberty of speaking and writing was allowed in ancient times, not only in free states, but wherever despotism fell into the hands of a mild sovereign; and so palling to the ear is the continual monotony of praise, that in the absolute kingdom of Persia, where the sovereign is thought to be the very image of the Divinity, a jester was always kept, whose business it was to tell the truth, and yet to tell it in such a way that the King might, if he pleased, laugh at the fable, and neglect the moral. The fool of modern kings was a creature invented for the same purpose. Such were the devices which sovereigns adopted for the sake of hearing a little free observation, at a time when nations were divided into the court and the country. The court never spoke of the King's actions but to praise them, and the country never spoke of them at all. Such was still the state of Europe when Machiavel wrote 'The Prince,' and he takes it for granted, in that much debated work, that the mass of the people can be kept wholly ignorant of the real character of their sovereign. The progress of knowledge has overturned the basis of his whole system, and were Machiavel to write at this day, he would probably recommend to kings a totally different line of conduct.

The policy pursued by the governments of Europe in latter times has been extremely various. Austria and Spain have assumed as a principle that, as general freedom of discussion must produce much calumny on private persons, much seditious writing against authority, and much matter offensive to morality and religion, it is prudent for the State, and humane to the writers, to place the press under the guardianship of censors appointed by the government. By this method, it is asserted, all fair and temperate discussion may be allowed; libels are stifled in the egg, before they have worked mischief; and public justice is spared the necessity of inflicting severe punishment. But in fact there is no method of restraining the abuse of the press previous to publication which does not control the use: the imperfect civilization of Austria and Spain bear witness to this truth. The government of France, without sanctioning so strict a system of ignorance as that of Spain, refused to allow publication without restraint. But the mitigated prohibitions of the French censors in some degree contributed to spread the false notions which obtained vogue at the beginning of their revolution. Everything might be attacked by an equivocal jest, although nothing could be combated by

direct reasoning; and the able writers of the last century soon found that the best institutions were as open to a sneer as the grossest abuses. General declamation and affected sentiment were allowed, till the opinions of men fell into general confusion. At length the throne was shaken, the altar sapped, and a mine ready to burst under their foundations, before any one had had a fair opportunity of urging an argument in their behalf. The policy of England has been, since the Revolution, completely the reverse both of the Spanish and the French. During the reign of Elizabeth, as we have seen, the most severe punishments were awarded to libellers. During the reign of James I. and the early part of Charles I., a censorship was established by means of a License Act. Cromwell adopted the same policy, which was continued by Charles and James. The License Act of the latter expired in 1694, and has never been renewed. The government of England thus deliberately, not in the heat of the revolution itself, but without clamour, without affectation, without fear, and at once, adopted a free press. The principle then sanctioned is, that as speaking and writing and printing are things in themselves indifferent, every person may do as he pleases, till by writing what is calumnious or seditious, he

offend against the laws. That a great advantage is afforded to personal liberty by the existence of a free press, is what no man can doubt. Reflection may convince us that this liberty is also beneficial to the community at large. Genius can never exert its powers to their full extent when its flight is limited and its direction prescribed. Truth can never be ascertained when all discussion is regulated by those who hold the reins of government, to whom the discovery of truth is not always acceptable. Neither is it true, as some foreigners imagine, that no government can withstand the daily attacks of the press. Men know when they are prosperous, and although they love to grumble at their rulers, the most brilliant rhetoric will not persuade a nation already in possession of liberty that it is wise to risk a civil war in order to obtain a change in the form of government. Popular clamour, if it be no more than clamour, is more noisy than formidable, and by a wise, beneficent government may be safely endured. The slanderous whisper of the Emperor of Russia's courtiers is ten times more dangerous to a good minister than the angry hubbub of the King of England's people.

The right of petition is another right by which

men are enabled to express their opinions, and to set forth their grievances. When Charles II. was engaged in a contest with his Parliament, this right was much discountenanced; and it was therefore declared by the Bill of Rights:—'That it is the right of the subject to petition the King, and that all commitments and prosecutions for such petitioning are illegal.' This right is still a very important one. A few years ago, the property-tax was overthrown chiefly by the petitions of the people to the House of Commons.

The rights we have now been stating, viz. those of printing and petitioning, invest the people with no actual power or authority. But they are of infinite importance in controlling and guiding the executive power. The influence of a free press, however, has never been so thoroughly felt as during the present reign,* and therefore, till I come to that period, I shall defer any further observation respecting it.

We come next to religious liberty, upon which subject the authors of the Revolution did as much as they could, and by their maxims laid the foundation of much more.

We have seen how little of the spirit of charity

* The reign of George IV.

and forbearance mixed with the reformation of Henry VIII. It is painful to think that Cranmer continued the same severity during the short reign of Edward, and that an unfortunate woman was burnt for some incomprehensible refinement respecting a mystery of our faith.

When the Papal power was for the second time overthrown by the accession of Elizabeth, no progress was made towards the establishment of religious liberty. From this time dates the great schism amongst the English Protestants, known, according to their respective parties, by the names of Puritans and Conformists. A congregation of refugees, settled at Frankfort in the reign of Queen Mary, omitted in their worship the Litany, and some other parts of King Edward's liturgy. A Dr. Coxe arriving there from England interrupted the service by a loud response, omitted in the new form of prayer. After some contest, and some expedients not quite worthy of the cause of religion, he succeeded in driving his opponents from the place, and establishing the liturgy of Edward. Other congregations, however, had made similar reforms, and when the exiles returned to England there arose an open difference between the Conformists, among whom were Grindal, Parker, etc., and the

Puritans, who reckoned among them John Knox, Bale, Fox, the author of 'The Book of Martyrs,' etc. The chief deviations introduced by the Puritans in practice, respected the use of the surplice, the cope, the cross in baptism, and kneeling at the communion; but in principle there was a much wider schism. The Conformists acknowledged the Church of Rome as a true church, though corrupted; and they maintained that the King, as supreme head of the Church, had authority to correct all abuses of order and worship. The Puritans abjured the Church of Rome altogether, and contended that it belonged not to the King, but to assemblies of the reformed clergy, to pronounce upon ceremonies and worship.*

It is not surprising that Elizabeth warmly espoused the cause of the Conformists. Naturally inclined to the splendours of the Roman Catholic service, and fully impressed with the weight of her authority in the Church as well as in the State, she proceeded to punish the adverse sect. In doing this she acted upon a principle common to both sides, — that an uniform faith and an uniform church were absolutely necessary. Agreeably to

* Neale's 'History of the Puritans,' vol. i. p. 144. See Note (F) at the end of the volume.

these notions, she obtained an Act of Parliament for instituting a Court of High Commission, and invested them with powers of fine and imprisonment which the law had not granted. She offered in vain bishoprics to Miles Coverdale, Knox, and others of the Puritan faith; nothing, she found, could shake their constancy. Many of the most upright reformers attested their sincerity by their deaths. Barrowe, Greenwood, and Penry were amongst the most distinguished of the reformers capitally punished for their religious or ecclesiastical faith.

James I., very soon after his accession, gave a sufficient warning that he was an enemy to toleration. For, having appointed a Conference at Hampton Court between the Conformists and the Puritans, he took upon himself to manage the controversy for the former, and after three days' dispute, amid the applause and flattery of the established clergy, he turned to his opponents and said, 'If this be all your party have to object to the established religion of this kingdom, I will make them conform, or expel them out of the land.'

He was as good as his word. The Court of High Commission required the Dissenters to appear before them, and to affirm solemnly upon oath

that which they could not conscientiously believe. Ruinous fines and long imprisonments were the penalties of disobedience. One person, accused of denying the divinity of Christ, and another charged with sixteen heretical opinions, were burnt alive.

Oliver Cromwell was raised by a sect which, the first in England, perhaps in Europe, made toleration a part of its doctrine. But it was a toleration of opinions, like the Presbyterian toleration of vestments, intended chiefly for their own convenience. Cromwell himself, who probably carried as far as any man of his day a wish for indulgence, yet in the Instrument of Government, after a solemn declaration in favour of religious liberty, finishes the article on this subject by expressly excluding Papists and Prelatists from the benefit of the general freedom. Thus, with liberality in profession, the law, in fact, authorizes persecution.

The declaration of Charles II., from Breda, offered new hopes of a mild and conciliatory system. But such hopes were grievously baffled by the laws passed soon after his accession. Those who attended any meeting for religious purposes 'in any other manner than was allowed by the liturgy or practice of the Church of England,' were punished for the first offence by £5 fine and three months'

imprisonment; for the second, by £10 fine and six months' imprisonment; and for the third, by transportation, and death in case of return.* By the Five Mile Act, dissenting clergymen were forbidden to preach within five miles of a market-town. During the last years of Charles, these laws against Dissenters were rigorously enforced.

At length, by the Act of 1 William and Mary, c. 18, intituled 'An Act for exempting their Majesties' Protestant subjects, dissenting from the Church of England, from the penalties of certain laws,' commonly called the Toleration Act, all persons who took the oaths of allegiance and supremacy, and subscribed the declaration against Popery, were exempted from penalties; and meeting-houses were regularly registered, provided the service was performed with doors unlocked. Since that time the Presbyterians of England have been allowed to perform their worship in the manner which they think most acceptable to God. At the same period, an attempt was renewed, which had been made in the reign of Charles II., to bring about a reconciliation between the Conformists and Dissenters. In this pious work, called the 'Comprehension,' Tillotson and Burnet took an earnest and Christian share.

* See Note (G) at the end of the volume.

They proposed to amend the liturgy in several points; to divide the services; to leave out parts of the prayers which had given offence, and, by a few wise and reasonable concessions, to restore to the Church a large multitude of her banished children. Articles for this purpose were prepared; but the clergy, in convocation, defeated these benevolent schemes, and insisted on exclusion and discord.

Among the concessions made to religious liberty, there were none in favour of the Roman Catholics. On the contrary, new laws were passed, of excessive severity, tending to render the Roman Catholics poor and ignorant, heaping penalty upon penalty, and making them, as it were, slaves among a nation of freemen. Yet it must not be supposed that a nation so humane as the English acted in this harsh and unusual spirit of bitterness without deep provocation. The reigns of Elizabeth, of James I., of Charles II., and of James II. had been disturbed by Roman Catholic plots, more or less sanguinary, some using as their means the assassination of the sovereign, others the introduction of a foreign army, but all tending to extinguish the liberties, and destroy the independence, of England. Whether the precautions adopted by the English Parliament

were wise, I will not pronounce; but I cannot deny that they were the result of many injuries.

Under the head of Personal Liberty should be placed eligibility to offices civil and military. The policy of the great states of the world has been often narrow, illiberal, and unjust, upon this branch of true freedom. Rome excluded for centuries her plebeian genius and valour from the rewards due to distinguished services. Modern France, at first, by custom of administration, and afterwards by positive edict, closed the door of military eminence to all ambition that was not of noble descent. Venice gave the command of her fleets to her patricians, and of her armies to strangers. England rejects all these odious distinctions of rank and birth. The ploughman's son may climb to the command of her military and naval forces; to the post of Lord High Chancellor, or the dignity of Archbishop of Canterbury. This just and wise equality has amply rewarded, by its effects, the State which established it. Not only has England reaped the benefit of talents which would otherwise have been lost in obscurity, but, by this impartial share in the dignities of the state, society, instead of forming two hostile classes of noble and plebeian, has been united in one compact power. In a well-known conference between

the Lords and Commons, it is stated, by Lord Somers, and other managers on the part of the Lords, that there can scarcely be a more unhappy condition for an Englishman, than to be rendered incapable of serving his country in any civil or military office. It must be observed, however, that religious disabilities are well known to the law of England. Protestant Dissenters were excluded from office by the Test and Corporation Acts. And although, for the last seventy years, they have been tacitly admitted, by an Indemnity Bill passed every year, in favour of any who may have omitted to take the oaths, their freedom cannot be said to be complete.* The Roman Catholics, it has already been observed, were likewise excluded from all power. By the Corporation and Test Acts, and other subsequent Acts of Charles II. and William III., all offices, civil and military, and even the doors of the Houses of Lords and Commons, were shut against them.

* *I. e.*, in 1814.

CHAPTER XIV.

POLITICAL LIBERTY.

'I believe the love of political liberty is *not* an error; but, if it is one, I am sure I shall never be converted from it, and I hope you never will. If it be an illusion, it is one that has brought forth more of the best qualities and exertions of the human mind than all other causes put together; and it serves to give an interest in the affairs of the world, which without it would be insipid.'—*Fox, Letter to Lord Holland.*

THE two kinds of liberty of which we have spoken, viz. civil and personal liberty, have existed to a certain degree in states which we usually term despotic. The monarchies of modern Europe have all been more or less governed by fixed laws, deriving their sanction from prescription. The monarchy of Prussia, which is altogether unlimited, allowed, from the time of Frederick II., great latitude of religious and political discussion.

I have said, however, that the definition of liberty, which describes a man as free who is go-

verned by laws, is incomplete, and I have confined that definition to the terms, Civil Liberty. So long as the supreme power of the State is placed in hands over which the people have no control, the tenure of civil and personal liberty must be frail and uncertain. The only efficient remedy against oppression is for the people to retain a share of that supreme power in their own possession. This is called political liberty. And what is called a love of liberty means the wish that a man feels to have a voice in the disposal of his own property, and in the formation of the laws by which his natural freedom is to be restrained. It is a passion inspired, as Sidney truly says, by Nature herself. In the manner of exercising this power, and satisfying this desire of the people, and in the portion of control retained by them, free states have differed; and in these forms consist their respective constitutions.

Authors who have written upon these subjects have distinguished three powers, viz. the Legislative, the Judicial, and the Executive. These powers, they maintain, ought to be separated. But the Legislative and the Executive never have been, and never can be so, thoroughly. The Judicial, indeed, which, properly exercised, means nothing more than

applying general rules or laws to particular cases, without any discretion, may be so separated; and we have already seen that, in the English Constitution, this division has been very wisely made.

The Judicial Power in England is, as we have seen, placed in the hands of persons rendered independent of the Crown by the law of William III., which makes them removable only upon an address by the two Houses of Parliament. Since this time the character of English judges has been held in deserved estimation:—of their personal integrity, and their conscientious attachment to the law, no doubts or suspicions have been entertained. The corruption of Tressilian and the unprincipled violence of Jeffreys, have never been repeated. The utmost that can be said against the judges is, that, always chosen from the Court party, and often from the placemen of the day, their bias in political causes has been naturally and inevitably in favour of the Crown. Any one who follows the State trials, will perceive, that the judges, in their interpretations of law, and still more in their sentences, reflect too lively an image of the inclination of the Government of the day: mild when the minister is moderate; severe when he is intemperate. Such is the fault of the judges

of England; but one which, seldom pushed to any great extent, even in language, and never to any violent or palpable misconstruction of law, is perhaps as slight a stain upon the ermine of justice as human nature will permit. Happily, too, precedents are now so numerous, and so carefully recorded, that a judge cannot, in the face of the Bar and of the country, very greatly deviate from the line of duty. Hence, the confidence of the people in the impartial distribution of justice still remains entire; so much so, indeed, that he who takes a view of our imperfect code, together with the attachment borne to it by the people, will see that the honest administration of the law reconciles the country to many defects in the law itself.

The two other Powers may be properly called the Executive and the Deliberative. The term Legislative implies merely making laws, which, in no state that I remember, has been totally disjoined from the Executive. These two powers are, in fact, in every constitution, continually influencing and acting upon each other. In Parliament composed of King, Lords, and Commons, resides the supreme government of this nation: the two Houses of Parliament constitute the great council of the King; and upon whatever subject it

is his prerogative to act, it is their privilege to advise. Acts of executive government, however, belong to the King; and should Parliament not interfere, his orders are sufficient. In legislation, nothing is valid, unless by the concurrence of all three.

The three branches of the legislature form what has been called the balance of the constitution: it would have been more just to have compared them to what is called in mechanics a combination of forces; for the combined impressions received from the three powers decide the direction of the whole.

The House of Commons, as it has before been observed, were intended to represent the people at large; and up to the time of the Revolution, they had been found to do so sufficiently well. Even the pensioner parliament of Charles II. had, in its last days, spoken fairly the sense of the people. In the beginning of William's reign, therefore, the House of Commons may be considered as a just representative of the nation.

The next element of the legislature was the House of Lords.

The Peerage serves two great purposes in our constitution.

First, it is a great and splendid reward for na-

tional services, whether by sea or land, in the navy or the army, in the king's council or on the judge's bench: it places a stamp upon eminent merit, and constitutes the posterity of the ennobled person a perpetual image of his achievements, and of their recompense. Secondly, the House of Peers collectively form a council for weighing, with great caution and deliberation, the resolutions of the House of Commons. If the more popular assembly is sometimes led away, as it is natural it should, by sudden impressions or temporary clamour, this hereditary senate may interpose its grave and thoughtful opinions, to suspend the effect of an intemperate vote. In the possession of such an assembly, indeed, consists the difference between a constitution of pure democracy and one of mutual control. North America, therefore, which is strictly a government of mutual control, is not without its Senate, as well as its House of Representatives.

Such is the Parliament or deliberative power of England.

The next object of importance to a state is, to place in hands, worthy to hold it, the power of negotiating treaties; of deciding upon foreign relations; of directing, in time of war, the operations of fleets

and armies; and, in short, all that is called the Executive Power. This power has been generally disposed of in one of two ways.

The first is, that of putting it into the hands of one person, called an Emperor, Sultan, or King, without any control. The obvious disadvantage of this mode is, that talent is not hereditary; and, as it was well put by Lord Halifax, 'no man chooses a coachman because his father was a coachman before him.' It is a necessary consequence of this form of government, that the peace and security of the State entirely depend upon one ill-educated man; for it is extremely difficult, if not impossible, that, in an absolute monarchy, a king should receive a good education. All his passions and all his follies are indulged; his ignorance is called genius, and his imbecility wisdom. But, above all, no object can be offered to him that can excite labour or emulation. Other men, whether nobles or artisans, can only be distinguished from amongst their equals by the excellence of their moral character, the superiority of their talents, or the advantages they have derived from industry. But a king, without any exertion, moral or intellectual, is placed above every one. Hence, in utter dearth of all useful ambition, he

tries to be celebrated by driving,* or fiddling, or some other art of easy attainment; or else, which is much worse, he aims at fame by commanding armies, and destroying provinces. The State, in the meanwhile, totally under his guidance, becomes weak with his weakness, vicious with his vice, poor with his extravagance, and wretched from his ambition. Absolute monarchy, then, is a scheme for making one man worse than the rest of the nation, and then obliging the whole nation to follow his direction and example.

Another method of providing for the government, which is at least more plausible, is that of putting the executive power in the hands of a citizen, elected to office for a certain period, and subject to the control of the people at large.

The inconvenience of this method is, that he who has once attained to so high a station, and has become in undisputed pre-eminence the first person in the state, naturally endeavours to retain power for a longer time than it was granted, and even for his life. But even if he should unite, what is very seldom united, a desire of performing great actions

* 'Il excelle à conduire un char dans la carrière,'—*Racine*, —meaning Nero, with a concealed allusion to Louis XIV. See also Bacon's Essays.

with a just fear of infringing the liberties of his country, yet the minds of men are naturally so suspicious, that, no sooner has an eminently gifted citizen raised himself above his fellows, than they suspect him of a desire of making himself absolute, and lose his services, that they may not be obliged to pay them with their liberty. On one or other of these rocks, if not both, nearly all democracies have split. Athens banished her best citizens by the ostracism. Rome drove from her Camillus, Coriolanus, Marius, and, above all, Scipio; and yet fell at last a victim to Cæsar's military power, and his ambition to be king. Holland, after numerous contentions, sank under the sovereignty of the Prince of Orange. Sparta and Venice are mentioned by Machiavel as exceptions to the general rule. But Venice also bought her security dear; for it was only obtained by a custom of excluding from military command all her own citizens, and giving to strangers the richest prizes a state has to bestow. The method adopted by Sparta was somewhat similar to that of England, to which we shall now pass.

The executive power of England is placed nominally in the hands of an hereditary king. His powers are known and defined by law, and are

therefore less liable to be exceeded than those of any extraordinary office not known to the Constitution. This was the argument most ably urged by Whitelocke and his coadjutors to the Protector Cromwell, to induce him to accept the title of King.* At the same time, the current of law, and the established reverence paid to majesty, form a complete bar to any great man who might wish to make himself absolute. So confirmed is public opinion, that a victorious general never dreams of overthrowing the liberties of his country. The Duke of Marlborough was dismissed from his command as easily as an ensign; and the Duke of Wellington returned from all his victories and pre-eminences to occupy an office of inferior importance, in a cabinet which had not to boast either of singular popularity or commanding genius.

But whilst the King's prerogative forms on the one side an almost invincible barrier to the ambition of any subject who might wish to become sovereign of the state in which he was born a citizen, it is on the other side quite open to the general control of the people. Thus the King has, by his prerogative, the command of the army; but that army

* See the conferences on this subject. They are to be found in the Parliamentary History.

is only maintained by virtue of a law to punish mutiny and desertion, passed from year to year. The King has a right to declare war; but if the House of Commons deny supplies, he cannot carry it on for a week. The King may make a treaty of peace; but if it is dishonourable to the country, the ministers who signed it may be impeached. Nor is the King's personal command any excuse for a wrong administration of power. The Earl of Danby was impeached for a letter which contained a postscript in the King's own hand, declaring it was written by his order. The maxim of the Constitution is, that the King cannot act without advisers responsible by law; and so far is this maxim carried, that a commitment by the King, although he is the fountain of justice, was held to be void, because there was no minister responsible for it.

From the doctrine of the responsibility of ministers, it follows that they ought to enjoy the confidence of the Commons. Otherwise their measures will be thwarted, their promises will be distrusted; and finding all their steps obstructed, their efforts will be directed to the overthrow of the constitution. This actually happened in the reign of Charles I. and Charles II. There was but one mode of preventing a recurrence of the same evil.

It was by giving to the King a revenue so limited, that he should always be obliged to assemble his Parliament to carry on the ordinary expenses of his government. On this point, more important than any provision of the Bill of Rights, a warm contest took place at the Revolution in the House of Commons. The Tories, wishing to please the new King, argued, against all justice and reason, that the revenue which had been given to James for his life belonged *de jure* to William for his life. The Whigs successfully resisted this pretension; and passed a vote, granting £420,000 to the King, by monthly payments. The Commons soon afterwards had all the accounts of King James's reign laid before them. It appeared that his government, without any war, cost, on an average £1,700,000 a year; a revenue of only £1,200,000 a year was given to William, with the expenses and debt of a formidable war to be provided for.

By this arrangement, the Crown was made dependent on Parliament ever after. Without even offering any advice, by a mere symptom of an intention to stop the supplies, the whole system of the King might be defeated, and his ministers dismissed from the council-board. Hence the House of Commons has the power to control most certainly

and effectually the acts of the supreme magistrate. Whatever struggles have been made since, have been made within the House of Commons. Ambitious men, instead of attempting, according to their several views, to abolish the monarchy, or dispense with Parliaments, have either sought to reach the King's closet through the favour of the people's representatives, or to serve the Crown by corrupting that assembly, and poisoning the sources from which their authority was derived. But whatever may have been said of the prevalence of the latter of these methods of government, it is certain that, for some time after the Revolution, power was retained longest by those statesmen whose political principles were stamped by the approbation of their country. A friend of liberty was no longer forced to the alternative of defying the authority of his sovereign, or perishing by the axe of the executioner; the same sentiments which he had spoken to the people, he was able to repeat to the King; and the same measures which he had recommended as an individual member of Parliament, he was afterwards empowered to propose, as the adviser of his sovereign. Thus harmony was produced between the different, and hitherto jarring parts of our Constitution; while the means by which that

harmony was attained gave, at the same time, a vent to emulation, liberty to the people, authority to Parliament, a bound to the ambition of political leaders, and stability to the throne. In this manner were the great principles of English liberty brought into action by the Revolution of 1688, whose authors, unambitious of the fame of founding a new form of government, obtained for the nation the full benefit of those venerable rights and liberties, for which their ancestors and themselves had toiled and suffered. This great work, thus gloriously completed, was at once a lesson to the to the great to avoid oppression, and to the people to practise moderation.

We have now gone through the different parts of that form of government which some paradoxical men have had the conceit to undervalue. Those who have been shaken by nothing that they have read in history, and who still maintain that liberty cannot flourish under our barbarous and feudal monarchy, may yet perhaps be struck by the following passage from an impartial judge.

M. de Talleyrand, in speaking of America, after remarking the partiality which the Americans entertained for English maxims and manners, goes on thus:—'Nor should one be astonished to find this

assimilation towards England in a country, the distinguishing features of whose form of government, whether in the federal union, or in the separate States, are impressed with so strong a resemblance to the great lineaments of the English constitution. Upon what does individual liberty rest at this day in America? Upon the same foundations as English liberty; upon the Habeas Corpus and the trial by jury. Assist at the sittings of Congress, and at those of the legislatures of the separate States: attend to the discussions in the framing of national laws: whence are taken their quotations, their analogies, their examples? From the English laws; from the customs of Great Britain; from the rules of Parliament. Enter into the courts of justice: what authorities do they cite? The statutes, the judgments, the decisions of the English courts. To no purpose do the names of republic and of monarchy appear to place between the two governments distinctions which it is not allowable to confound: it is clear to every man who examines his ideas to the bottom, that in the representative constitution of England, there is something republican; as there is something monarchical in the executive power of the Americans.'

CHAPTER XV.

LAWYERS.

'Rex sub lege.'—*Bracton.*

Among other cavillings at the practice of our Constitution, there has been raised a cry against the influence of lawyers. From the earliest times, however, that influence has been beneficial to the country. Bracton, who was a judge in the reign of Henry III., and Fortescue, who was chief justice in that of Henry VI., are among the earliest authorities in favour of the liberties of the country. In the beginning of the contest with the Stuarts, the names of Coke and Selden appear with auspicious lustre on the side of freedom. In the second contest with the Stuarts, among a host of lawyers, with the venerable Serjeant Maynard at their head, appears the virtuous, the temperate, the wise and venerated Somers. From him we pass to Lord Cowper, a Whig chancellor, who yet opposed the

Bill of Pains and Penalties against Atterbury, as an unnecessary violation of justice. The next in succession, as a friend to liberty, is Lord Camden, who, by his admirable judgments on the question of general warrants and on libel, saved the country from the slavish doctrines with which it was threatened to be inundated.

In the House of Commons, the members who have taken a chief part in the debates have generally been lawyers. This is the natural result of their habits of speaking, and we see them on one side of the House as well as on the other. On the side of freedom we may reckon a series of bright names, that began with the beginning of our Constitution, and, I trust, will continue to its close.

It were needless to come down to present times, were it not that I should be sorry to omit any opportunity of expressing my admiration for that great genius whose sword and buckler protected justice and freedom, during the disastrous period of the French Revolution. Defended by him, the Government found, in the meanest individual whom they attacked, the tongue of Cicero, and the soul of Hampden; an invincible orator, and an undaunted patriot. May the recollection of those contests, and those triumphs, brighten the last days

of this illustrious man, and excite those who have embraced the same studies to seek for a similar inspiration!

Such instances might persuade us that the study of the law, by giving men a better knowledge of their rights, gives them a stronger desire to preserve them, and by affording them a nearer view of our Constitution, enables them the better to appreciate and cherish its excellencies. Unfortunately, however, there are instances, on the other side, of men who, attracted by the brilliant rewards in the profession of the law which the Crown has to give, have made themselves the tools of tyranny and corruption. But this is by no means an exclusive attribute of lawyers. The mean Lord Strafford, who sold* his country for an office and a peerage, was a country gentleman; and the false Lord Bolingbroke, who betrayed his benefactor, and endeavoured to restore a race of despots, was a wit and a man of fashion.

* Lord Erskine was yet living when this passage was written.

CHAPTER XVI.

RISE OF PUBLIC CREDIT UPON THE BASIS OF A FREE CONSTITUTION.

'I know nothing more remarkable in the government of Genoa than the bank of St. George, made up of such branches of the revenues as have been set apart, and appropriated to the discharging of several sums that have been borrowed from private persons during exigencies. They have never thought of violating public credit, or of alienating the revenues to other uses than to what they have been thus assigned.'—*Addison's Remarks on Italy.*

Soon after the restoration of Charles II., a scheme was proposed to him by Sir George Downing, the whole merit of which consisted in laying down a rule for the exact and regular payment of interest for all money the King should borrow. With the view of affording to merchants security for the performance of this agreement, Downing, with the consent of the King, introduced a clause into a bill of supply, appropriating to the different purposes therein mentioned the money granted in the

bill. Clarendon, who relates the affair, was highly indignant at this new check upon the prerogative, and, along with others, remonstrated in strong terms with the King. The rest of the story I will relate in Clarendon's own words. 'He (King Charles) enlarged more in discourse, and told them "that this would be an encouragement to lend money, by making the payment with interest so certain and fixed, that there could be no security in the kingdom like it, when it should be out of any man's power to cause any money that should be lent to-morrow to be paid before that which was lent yesterday, but that all should be infallibly paid in order; by which the Exchequer (which was now bankrupt, and without any credit) would be quickly in that reputation, that all men would deposit their money there; and that he hoped, in a few years, by observing the method he now proposed, he would make his Exchequer the best and the greatest bank in Europe, and where all Europe would, when it was once understood, pay in their money for the certain profit it would yield, and the indubitable certainty that they should receive their money." And, with this discourse, the vain man (Sir George Downing) who had lived many years in Holland, and would be thought to have made himself master

of all their policy, had amused the King and his two friends, undertaking to erect the King's Exchequer into the same degree of credit that the Bank of Amsterdam stood upon, the institution whereof he undertook to know, and from thence to make it evident, "that all that should be transplanted into England, and all nations would sooner send their money into the Exchequer, than into Amsterdam, or Genoa, or Venice." And it cannot be enough wondered at, that this intoxication prevailed so far, that no argument would be heard against it, the King having, upon those notions, and with the advice of those counsellors, in his own thoughts, new modelled the whole government of his Treasury, in which he resolved to have no more superior officers. But this was only reserved within his own breast, and not communicated to any but those who devised the project, without weighing that the security for moneys so deposited in banks is the republic itself, which must expire before that security can fail; *which can never be depended on in a monarchy, where the monarch's sole word can cancel all those formal provisions which can be made* (as hath since been too evident), by vacating those assignations which have been made upon that and the like Acts of Parliament, for such

time as the present necessities have made counsellable; which would not then be admitted to be possible.'*

From the above passage of Lord Clarendon, it is evident he thought public credit incompatible with arbitrary monarchy. His opinion was fully justified by the subsequent conduct of the King, whom he counselled. Charles II. was accustomed to borrow money from the bankers, payable on receipt of the taxes, very much in the manner of our present exchequer bills, but at 8 or 10 per cent. interest instead of 3 or 4. At the commencement of the second Dutch war, when the taxes came in, he closed the door of the Exchequer, and refused to pay. Such conduct, it is evident, must be quite fatal to so sensitive plant as public credit, which can only grow under the temperate influence of just and free laws. The infamy of this swindling transaction of Charles, was in some measure repaired in the reign of William III., when a large portion, at least of the sum owing, was funded as stock, and made to form part of the national debt.

With the revolution came an expensive war against the most powerful monarch in Europe, and the nation had to support the choice it had

* Clarendon Hist. Reb., vol. i. p. 316, 317.

made of a sovereign by sacrifices of every kind. In this situation, the party that governed the country bethought themselves of making use of those resources of public credit, which had already been found of powerful effect in Holland and in Venice. Thus the Bank of England was established a few years after the Revolution. About the same time, the silver currency was restored to a just standard, a measure which for a time created a scarcity of coin in the country: a general stoppage of trade took place; and the paper of the Bank of England, soon after its establishment, fell to twenty per cent. discount. In order to remedy these evils, Mr. Montague, Chancellor of the Exchequer, who may be considered the founder of our financial system, collected all the debts out-standing, which amounted to five millions, imposed taxes for the payment of the whole, and in order to relieve the want of currency, issued bills payable on the receipt of the taxes, since called Exchequer bills. Public credit revived, the capital of the Bank was increased, and the currency became sufficient for the wants of the country.

From this time loans were made of a vast increasing amount with great facility, and generally at a low interest, by which the nation were enabled

to resist their enemies. The French wondered at the prodigious efforts that were made by so small a power, and the abundance with which money was poured into the treasury. They saw, to their dismay, that while Louis could hardly obtain, by the most humiliating means, sums sufficient to provide his armies; Great Britain, firm and undismayed, found for ever fresh resources in the wealth and confidence of her merchants. Books were written, projects drawn up, edicts prepared, which were to give to France the same facilities as her rival; every plan that fiscal ingenuity could strike out, every calculation that laborious arithmetic could form, was proposed, and tried, and found wanting; and for this simple reason, that in all their projects drawn up in imitation of England, one little element was omitted, *videlicet*, her free constitution.*

All the money voted by the House of Commons is, at present, strictly tied up to special purposes, by an Act of Appropriation passed at the end of every session of Parliament: the very measure which excited the loyal horror of Lord Clarendon.

* Among other schemes, the King of France ordered that every coin should pass for a nominal value higher than it had hitherto passed for. Addison wittily said that he might as well have ordered that every grenadier of six feet high should in future pass for seven feet high, and thus think to increase the strength of his army.—*Freeholder.*

CHAPTER XVII.

PARTY.

'Party is a body of men united for promoting, by their joint endeavours, the national interest, upon some particular principle, in which they are all agreed. Men thinking freely will, in particular instances, think differently. But still, as the greater part of the measures which arise in the course of public business are related to, or dependent on, some great *leading general principles in government*, a man must be peculiarly unfortunate in the choice of his political company if he does not agree with them, at least nine times in ten. And this is all that ever was required for a character of the greatest uniformity and steadiness in connection. How men can proceed without connection at all, is to me utterly incomprehensible. Of what sort of materials must that man be made, how must he be tempered and put together, who can sit whole years in Parliament, with five hundred and fifty of his fellow-citizens, amidst the storm of such tempestuous passions, in the sharp conflict of so many wits and tempers and characters, in the agitation of such mighty questions, in the discussion of such vast and ponderous interests, without seeing any one sort of men, whose character, conduct, or disposition, would lead him to associate himself with them, to aid and be aided in any one system of public utility?'—*Burke.*

THE reign of Queen Anne is as remarkable for the violent contentions, as that of George I. for the

complete ascendancy of party. It is worth while to consider the effects both of the contention and the triumph. Let us, first, however, endeavour, in a few words to explain the existence of party-divisions, and to vindicate the integrity of those who avow that they belong to party. The general defence of political connexion, indeed, may be left where Mr. Burke has placed it. There can be nothing more striking, or more sound, than his writings on this subject. But although his reasoning never has been, and never can be answered, a certain degree of favour still attends the man who declares himself not to belong to party; as if he were clearing himself from the imputation of dishonesty or selfishness.

The division of England into two great parties began, as I conceive, and still continues, in consequence of wide and irreconcileable differences of opinion.

The Tories at the commencement of the reign of James I. looked upon the exaltation of the Crown as their favourite object. Allowing, as they now do, that the King is entrusted with his power for the public good, they yet thought that public good requires he should be unfettered in the exercise of his prerogative, so far as the law permits. While

he remained, therefore, within the legal bounds assigned to him, they were, to say the least, extremely unwilling to control his power. If he stept beyond them, or placed the country in great danger, they were ready to oppose the Crown by their votes in Parliament, or in any other legal manner. It follows from their doctrine, however, that their tendency always was to support the King in the first place, in all his measures, and to refuse their sanction only when those measures have placed the country in peril so imminent, that they were obliged reluctantly to disclose their own opinions.

The Whigs looked towards the people, whose welfare is the end and object of all government. They maintained, that as the King's advisers are responsible for his measures, it is the duty of Parliament to examine and pronounce whether those measures are wise and salutary. They were, therefore, ready to interfere with any exercise of the prerogative, which they thought unwise or improper; and to insist (too haughtily, perhaps, at times) upon the adoption of that line of policy which they considered as best adapted to the wants and state of the country.

Such appears to me a just general representation

of Whig and Tory opinions, from the commencement of the reign of James I. to the end of that of George II.

If I have made a fair statement, it was inevitable that the two parties should separate, and remain divided.

Let me now suppose a young Member of Parliament coming to London at the beginning of the reign of Queen Anne. He adopts, let us suppose, the opinions of the Tories. He votes generally, but not always, with that party. He naturally becomes acquainted with some of them. He talks over the questions that are coming on for some time before. These conversations lead to a more intimate union: his opinions are listened to, and his doubts melt away in the course of amicable discussion. Sometimes, when the measure is one of party policy rather than of principle, he surrenders his own opinion to that of the statesmen most respected by the society of which he is a member. He thinks it more probable that several able, and a large body of patriotic men, *arguing from the same principles as himself*, should form a right decision, than that he alone in the whole House of Commons should, from given general principles, have derived a true conclusion. He is,

in short, a party man. Thus it is that, without any violation of conscience, party is formed and consolidated, and men acquire that kind of '*esprit monacal*' which, according to the remark of a very sagacious foreigner,* prevails in the political confederacies of England.

Let us now proceed to the effects of party contests.

Among the bad effects of party is to be reckoned the want of candour it necessarily produces. Few men can enter into the heat of political contention, backed by a body of friends, who animate and support each other, without attributing to their adversaries bad intentions and corrupt motives, of which they are no more capable than themselves.

Another evil is, that men become unwilling to give way to the natural bent of their minds, when their understandings would lead them to admit any error upon which their adversaries have insisted, or to render them liable to reproach for weakness and inconsistency. Obstinacy in supporting wrong, because an admission of what was right and true would give a triumph to opposition, has led many a minister of England into a course most injurious to the country.

* The Abbé Galiani.

In attributing this evil to party, I by no means intend to lay upon the same cause the blame of the exaggeration which accompanies political discussion. Such exaggeration I believe to be inevitable. It is true, indeed, that every statesman has at times occasion to weigh with some degree of doubt the reasons for or against a measure which he afterwards supports or opposes, with as much warmth and confidence as if there could not be two opinions on the subject. But it does not follow that it would be right or useful to produce in public all the arguments which have gone through his mind before he came to a decision. What would be the effect, for instance, of the speech of a minister proposing an address in support of a new war, who should lay a stress upon the hazards by which it would be attended, and the new burthens it must infallibly produce? Nothing, it is evident, but discouragement, and perhaps a disgraceful treaty. For the slightest words which a man lets fall in opposition to his ultimate opinion, are of more weight against that opinion than the strongest arguments he can use in its favour. Those who agree with him are all disheartened, and those who differ from him are all encouraged. Nor does this proceed from the factitious spirit of party, but from human nature

herself. Public affairs are so constituted, that the truth scarcely ever lies entirely on one side; and the human mind is so formed, that it must either embrace one side only, or sink into inaction.

Nor do I impute to party the corruption by which votes in Parliament are obtained. Some persons, I know, imagine that the minister has recourse to corruption only because it is necessary to strengthen himself against the Opposition. But it is evident that, in a free government like ours, the ministers will always make use of the influence of patronage that is in their hands to procure themselves adherents. For a minister knows very well that he must have adherents. He cannot reasonably found his administration on the support which he may be able to obtain by his arguments in favour of each particular measure. Now, of the two ways of procuring adherents—the attachment of interest and that of party—party is by far the best. Many a man, I fear, would abandon his opinions, and fall off from his principles, for the sake of office, who yet will not desert a party to which he is engaged by passion and affection, as well as by reason.

Party, therefore, instead of being the cause of corrupt and undue influence, is often a substitute for it. Some, indeed, think it possible that the

world may be governed by pure intention and the force of argument only. But it is well said by Mr. Wilberforce, when speaking of religion, 'Man is not a being of mere intellect. *Video meliora proboque, deteriora sequor*, is a complaint which, alas! we might all of us daily utter. The slightest solicitation of appetite is often able to draw us to act in opposition to our clearest judgment, our highest interests, and most resolute determination.' 'These observations,' proceeds the enlightened author, 'hold equally in every instance, according to its measure, wherein there is a call for laborious, painful, and continued exertions, from which we are likely to be deterred by obstacles, or seduced by the solicitation of pleasure. What, then, is to be done in the case of any such arduous and necessary undertaking? The answer is obvious:—You should endeavour not only to convince the understanding, but also to affect the heart; and for this end you must secure the reinforcement of the passions.'*

The good effects of party in this country are numerous and weighty. One of the chief of them is that it gives a substance to the shadowy opinions of politicians, and attaches them permanently to steady and lasting principles. The true party-man finds

* Wilberforce's Practical View of Christianity, p. 60.

in his own mind certain general rules of politics, like the general rules of morals, by which he decides every new and doubtful case. The belief that those principles are just, enables him to withstand the seductions of interest, and the ingenuity of projects: his conduct acquires somewhat of the firmness of integrity and wisdom.

The union of many in the same views enables a party to carry measures which would not otherwise gain attention. There often occurs a proposal eminently useful, yet not calculated to catch popular favour, which, by the stout and strong working of a party, at length becomes law; that which is an overmatch for the strength of an individual, is accomplished by the united force of numbers. The waggon arrives at last at its destination; but a loose horse will probably return to the place from which he set out. It likewise sometimes happens that party succeeds where the people have failed. The enthusiasm of a whole nation is in its nature evanescent. If successfully resisted at first, it often sinks into apathy, and the country remains passive, though not satisfied, under the weight of a defeat. But a party is pledged; the character of the individuals belonging to it depends upon their consistency; their principles are handed down from

father to son, and become the mould from which successive generations receive the form and pressure of their politics. It may be observed, on the other side, that many instances can be quoted of parties who, on coming into power, have shrunk from their original professions; but they are not so frequent as those of a complete and radical change in the popular voice with respect to the objects of its predilection or aversion.

The greatest benefit of all that is conferred by party is, perhaps, that it embodies the various opinions of the nation for the time being. Those opinions are at times so violent, that, had they not a vent in Parliament, they would break the machine to pieces. Happily the people, when they overturned Sir Robert Walpole, placed confidence (a confidence little justified, perhaps) in his opponents; and when Lord North appeared to have ruined everything, the nation looked for safety to Lord Rockingham and Mr. Fox. There may be a revolution in this country; but it is hardly possible that the country should not first try what may be done by a change of counsels. Thus the great and final reason of nations, the right of resistance, is not likely to be used till better and safer means have been tried. To possess such means is

a great advantage for the nation which can employ them.

In reckoning up the bad effects of party, I have not spoken of the animosities and violent contentions it produces. Mock philosophers are always making lamentations over political divisions, and contested elections.

Men of noble minds know that they are the workshop of national liberty, and national prosperity.

It is from the heat and hammering of the stithy that freedom receives its shape, its temper, and its strength.

CHAPTER XVIII.

WILLIAM AND MARY.—ANNE.

'Un roi fait ailleurs entrer aveuglément ses peuples dans toutes ses vues; mais à Londres un roi doit entrer dans celles de son peuple.'—*Voltaire, Siècle de Louis XIV.*

LET us now proceed to the history of the two parties from the Revolution to the reign of George I.

We have seen that the Whigs refused to grant King William a permanent income that might render him independent of his people; and he dissolved the Parliament in 1690 with some disgust. The next House of Commons was a Tory one; and Sir John Trevor, a violent Tory, was made First Commissioner of the Treasury. He undertook to distribute bribes in such a manner as to secure the votes of the majority; being the first systematic corruption after the Revolution. Trevor was afterwards punished for bribery in a question relating to the Orphans Bill. There arose at this time a violent struggle between the Whigs and Tories for

the favour of the King, and the confidence of the people. The dismissal of Monmouth and Warrington attested and established the success of the Tories. The Tory party were supported by the small proprietors of land and the gentry of the country, who feared a bias to innovation on the part of the Whigs both in politics and religion. On the other hand, the Whigs were esteemed by the people as having been the original opposers of arbitrary power, and had the credit, as well as the responsibility, of the new settlement. In order to support it, they came forward with their wealth in a time of embarrassment, and also prevailed upon their friends in the city, which was then, as in former times, a stronghold of liberty, to lend largely to the government. By these means, the Whigs attached men of great wealth to the establishment, and distinguished themselves to their advantage from the Tories, who were unwilling, or unable, to advance considerable sums. Hence the King, who had placed his confidence in Ranelagh, Rochester, and Seymour, afterwards discovered an inclination to trust the Whigs, raised Somers and Shrewsbury to high situations, and gave his tardy consent to the Triennial Bill. After the peace of Ryswick, the Whigs defended the maintaining of

the Dutch Guards, in which perhaps they were right, though the line they took exposed them to much popular odium. The defeat of this favourite wish of our deliverer is a proof how extremely weak the royal authority was at this period. It would not be so easy perhaps to defend the Whig party in their transactions respecting a new East India Company. Still less can they escape blame for having suffered in silence the conclusion of the treaty of partition. By this treaty, William imprudently trusted himself to the faith of the French King, and unwarrantably disposed of the whole of the Spanish monarchy during the life of the reigning sovereign. The partition, thus previously arranged, at once provoked the Spaniards and enraged the Emperor. It was rash in policy, unfounded in justice, and impracticable in execution. With arms thus imprudently furnished by their adversaries, the country party violently attacked the Whigs in the House of Commons: Orford and Somers were removed and disgraced: a Tory ministry was established, and was the last of King William.

Queen Anne came to the throne with violent prejudices in favour of Tory politics, both in church and state, and severe bills against occasional conformity were received with applause by a House

of Commons composed chiefly of that party. But the natural inclinations of the Queen yielded to the advice of Marlborough, who, though himself a Tory, became convinced that Lord Rochester would not actively support the war, and that the Whigs alone sympathized with the sentiments of King William as expressed in the last speech that he delivered to his Parliament. Feeling that a vigorous opposition to the arms of Louis XIV. could alone save the liberties of Europe, Marlborough advised his mistress to give her countenance to the Whig party. Lord Cowper was made Lord Chancellor; but still the Queen hesitated to give her consent to the admission into her councils of persons whose politics she detested; and year after year passed in struggles at court to obtain the higher offices of state for Sunderland and Somers. It would not be just to ascribe these demands of the Whig leaders to the mere love of office: their ambition was of a higher kind. They aspired to rule the state according to their own system of policy, and they found that all their efforts were thwarted by the wilful negligence of the Tories, who filled less conspicuous places in the administration. Godolphin tells us, that there was not a Tory in any ministerial office who did not require to be

spoken to ten times over before he would execute anything that had been ordered, and then it was done with all the difficulty and slowness imaginable. This conduct, dangerous if not treasonable in the midst of a perilous war, certainly goes far to justify the importunity of the Whigs to remove Sir C. Hedges from the post of Secretary of State, in order to give him a more permanent and profitable but less responsible office.*

The Whigs held their power by a precarious tenure. The Queen, originally adverse to them, was rendered implacable by their haughty invasion of the cabinet; and she was daily excited to little acts of hostility by Mrs. Masham, who had succeeded the Duchess of Marlborough in the government of her weak head and ignoble heart. There needed only a popular and plausible occasion for discarding the general who rendered the name of England illustrious by his victories, and the statesman whose reputation was founded equally on his wisdom and his love of liberty. The occasion soon happened: Marlborough and Somers fell: Harley and St. John rose upon their ruin: and nothing but the personal rivalry of these two unprincipled men saved the Hanoverian succession.

* See Conduct of the Duchess of Marlborough. Coxe's 'Life of Marlborough.'

It must be owned, that the Whigs gave heedlessly a handle to the designs of their enemies. The trial of Dr. Sacheverel was imprudent. Under an established government it was not wise to proclaim aloud the doctrine of resistance; nor could there be much peril in leaving a clergyman of no great station to vaunt his absurdities unmolested. The solemnity of an impeachment, the marshalling of all the forces of the state against a private individual, could not fail to excite afresh that cry in favour of the High Church which ought to have been allowed to sleep in peace. In consequence of the popularity of Sacheverel, and the well-known opiniöns of the Queen, a House of Commons was obtained completely favourable to the Tories. And here begins the history of those last four years of Queen Anne, in which the press was restrained, intolerance favoured, our allies deserted, our enemies encouraged, and a disadvantageous peace concluded. Indeed, had not Queen Anne died before the measures of the Jacobites were prepared, the Elector of Hanover might never have been able to ascend the throne, to which the Act of Settlement had called him.

We have now gone over the struggles of party during the reigns of the first two sovereigns who

reigned after the Revolution. They were times in which political integrity was rare, and political animosities violent, but the people were admitted as an umpire between the contending forces; and, upon the whole, the rise and fall of each party seems to have been proportioned to its merits. In so saying, I must except the elevation of Harley and of St. John: men who were base enough to flatter Marlborough for the purpose of lulling and supplanting him, ought to have remained in the obscurity in which they were originally placed. With this exception, however, the contest between the two parties was a contest between two lines of policy, in which the welfare of the State was involved, and between two great principles, on one or other of which the foundations of the English government must be made to depend. Men of great talents, vast property, and long experience, distinguished themselves on one side or the other; and to whichever side the nation leant, more practical liberty, more personal security, and more tranquillity from religious persecution, as well as more fame and consideration abroad, were enjoyed by the nation than had ever been known in England.

CHAPTER XIX.

IMPEACHMENT.—BILLS OF PAINS AND PENALTIES.

'The Parliament have also power to punish any who judge for man and not for the Lord; who respect persons or take gifts, or any way misdemean themselves in their offices.'—*Whitelocke, Notes on the King's Writ.*

It is absolutely necessary to the preservation of an established form of government, that there should exist a legal method of bringing to punishment those who endeavour to subvert it. For this reason the executive magistrate is always entrusted with the means of proceeding to a trial against persons who conspire against his or their lawful authority.

In the same way, and for the same reasons, there must exist in a free State a method of accusing those persons who have abused the authority confided to them for the purpose of usurping undue power, or corrupting the citizens, or obtaining ends

adverse to the general interest of the community. In this case the discretionary power of proceeding to trial cannot rest with the executive magistrate, for he is generally the party complained of; it must reside in the popular branch of the State. It is therefore wisely provided in our government, that the House of Commons should have the right of impeachment. This extraordinary power, thus confided to the representatives of the people, enables them to denounce, as guilty of high treason, all who shall violate the law upon this subject. It enables them also to denounce, as guilty of high crimes and misdemeanors, all ministers of state whose conduct is injurious to the interest of the nation. Some, I know, have maintained that an impeachment can only lie against an indictable offence; but this doctrine is in plain contradiction to three out of four of the impeachments which have taken place. To take one instance only:—In the case of the ministers who signed the Treaty of Partition, the House of Commons resolved on April 1, 1701, 'That William Earl of Portland, by negotiating and concluding the Treaty of Partition (which was destructive to the trade of this kingdom, and dangerous to the peace of Europe), is guilty and shall be impeached of high

crimes and misdemeanors.'—Now what petty jury could take upon them to say that a treaty was destructive to the trade of England; or to bring in a verdict of guilty on a charge of endangering the peace of Europe?

The same thing may be said of the impeachments against Oxford and Bolingbroke for signing the Treaty of Utrecht. Those who argue that impeachments can only be brought for an indictable offence, say, 'It is true a jury could not try these offences; but that is only an objection to the jurisdiction; every misconduct in office is a misdemeanor at common law.' This answer, it is evident, reduces the difference to nothing; for if certain offences can be prosecuted by impeachment only, it does not matter whether the cause is to be found in the want of law, or the defect of jurisdiction, to bring them before any other court.

It is impossible for the King to stop the progress of an impeachment. His pardon under the great seal cannot be pleaded in bar of trial. His prerogative of prorogation, or even of dissolution, may suspend, but does not put an end to the proceedings. These two securities for justice were contended for during the trial of the Earl of Danby, in the reign of Charles II.; the first was established at the

Revolution, and the second confirmed during the impeachment of Mr. Hastings.

It is much more difficult, in a free State, to establish impartial judges than to find courageous accusers. There can hardly be any body of men who are at once qualified to form an opinion on political questions, and not disqualified by having formed one before they are called upon to judge. This latter fault, it must be owned, is found in our House of Lords. It is difficult, if not impossible, to bring a principal minister before them, on whose conduct they have not already pronounced judgment in their own minds. For this reason we find, that when the Lords are in favour of the accused, Lords and Commons generally conspire to produce a quarrel between the Houses, and thus avoid giving judgment. So it happened in the cases of Lord Danby, Lord Somers, and many others. The experience of later times has not made impeachments more easy in the trial, or more impartial in judgment. The impeachment of Hastings was a long punishment; and in the last case of impeachment the Lords were found to vote more from a sense of political or personal friendship than from a sense of justice; and some came to the decision without having heard a word of the evidence. Im-

peachment, upon the whole, is rather a scarecrow to frighten public delinquents, than a real security for public justice. In former times it drove many a bad minister from the council-board; at present that end is attained, when it is attained, by simpler means. Yet, perhaps, the bloodless result of impeachments is one of the modes by which the lenity of our parties towards each other has been preserved.

Bills of attainder and bills of pains and penalties, passed by Parliament, are of a very different nature from impeachments. They have been generally, if not always, used on occasions of great moment and urgency. Two circumstances seem to be requisite to all bills of this kind:—First, That it is impossible to convict the offender by due course of law. Secondly, That his escape would be in the highest degree injurious to the State. Great indeed must be the mischief that would arise from the impunity of a criminal, to over-balance the evil of shaking the common security of the subject, disturbing the regular course of justice, and affording an example of punishment inflicted on one who cannot be convicted of a crime.

Instances of bills of attainder and bills of pains and penalties are, unfortunately, too numerous on

our statute-book. But, in early times, bills of attainder, however unjust in their operation in particular instances, had not the character they have at present. Originally, the high court of Parliament was not a court only in name, but was chiefly employed in deciding causes, and particularly in judging all the great criminals whose power placed them beyond the reach of a jury. The offences for which such criminals were condemned were, however, offences of which a jury might legally have taken cognizance. Thus it was with the Spencers, the adherents of Richard III., and others. The reign of Henry VIII. opens to us a more alarming scene. A bill of attainder was passed against Empson and Dudley at the accession of that King, for the exactions of which they had been guilty, under the reign of his father. As these exactions had been sanctioned by an Act of Parliament, there was surely great injustice in condemning those who had acted under it to a capital punishment. The act of attainder was also unnecessary; for Empson and Dudley had been previously convicted of treason at Guildhall, for an attempt to maintain themselves by force.* So strong was the popular feeling against them, however, that they probably

* State Trials. Burnet's Hist. Reformation.

met with as little justice from a jury as from a parliament.

In the same reign of Henry VIII. Queen Catherine Howard was condemned to lose her head, by a bill of attainder, for incontinency before her marriage with the King. When the bill was in progress, the Lords, by the desire of Henry, sent a message to her, to ask her if she had anything to say in her defence. She, however, confessed her guilt; and in those times she did not think of complaining that she was to suffer death for a crime unknown to the laws.

In the year 1539, a most dangerous precedent was made. The Marchioness of Exeter and the Countess of Salisbury refusing to answer the accusation against them, were attainted by Act of Parliament. 'About the justice of doing this,' says Burnet, 'there was some debate; and to clear it, Cromwell sent for the judges, and asked their opinions, Whether a man might be attainted in Parliament, without being brought to make his answer? They said it was a dangerous question. That the Parliament ought to be an example to all inferior courts; and that when any person was charged with a crime, he, by the common rule of justice and equity, should be heard to plead for himself.

But the Parliament being the supreme court of the nation, what way soever they proceeded, it must be good in law; and it could never be questioned whether the party was brought to answer or not.* The precedent thus begun was soon made worse, as all bad precedents are; in this case, however, the person was well chosen: it was Cromwell himself. Instead of declining to plead, he petitioned to be heard; but his request was refused, and an attainder passed on the mere assertion of his enemies.

Of the bill of attainder against Strafford I have before spoken. There can be no excuse for the manner in which the bill was forced through. It must be observed, however, that few cases of State necessity can be imagined so strong as that which could be urged for the condemnation of Strafford. Some of the moderate among the Presbyterian party † were for sparing his life; but they were hurried on by others of a more bloody temperament. The bill of banishment against Clarendon had this strong foundation, that he had withdrawn himself from justice: yet this ground seems to me not to be sufficient for such a proceeding. I am

* Burnet, Hist. Ref., p. 265.

† The Earl of Bedford, Mr. Pym, Mr. Selden, etc.

not, however, disposed very greatly to blame the act of attainder against Sir John Fenwick. A person accused of high treason, and about to be tried in the due course of law for that offence, who pretends he is going to reveal his treason, and takes advantage of his fraud to spirit away a witness, seems to me to have removed himself beyond the pale of all law. His crime was one of the most dangerous nature.

There is not so much to be said in favour of the bill of pains and penalties against Atterbury. It is urged in justification, that Walpole could have brought evidence enough against him to have convicted him of high treason in a court of law. Whether he could have done so or not, it remains as a stain upon his memory for ever, that, for the purpose of banishing this busy priest, he should have induced Parliament to condemn him upon the evidence of letters not in his own hand, and after the death of the person supposed to have written them.

The protest signed by Lord Cowper and thirty-nine other Peers on this occasion, contains a sound and satisfactory doctrine on the subject of all bills of this nature.

'We are of opinion,' say these Lords, 'that no

law ought to be passed on purpose to enact that any one be guilty in law, and punished as such, but where such an extraordinary proceeding is evidently necessary for the preservation of the State.

'We clearly take it to be a very strong objection to this mode of proceeding, that rules of law made for the security of the subject, are of no use to him in it, and that the conclusion from hence is very strong; that, therefore, it ought not to be taken up, but where clearly necessary, as before affirmed; and we do desire to explain ourselves so far, upon the cases of necessity excepted, as to say we do not intend to include a necessity, arising purely from an impossibility of convicting any other way.'

CHAPTER XX.

GEORGE THE FIRST, AND GEORGE THE SECOND.

'I shall continue, during the short remainder of my life, most steadily attached to the ancient freedom of my country (as it was practically enjoyed under those honest old gentlemen, George the First and Second), and your grateful servant,

'JOHN HORNE TOOKE.'

Mr. Horne Tooke's Address to the Electors of Westminster, June 26, 1802.

THE tranquil accession of the House of Hanover to the throne of these realms is the greatest miracle of our history. The ministry of Queen Anne, great part of the Church, and almost all the country gentlemen, were against this violation of the rules of legitimacy, merely in order to preserve the civil and religious liberty of the country; it was the triumph of the enlightened few over the bigotry of millions.

The accession of George I. was the era when government by party was fully established in England. During the reign of William, Whigs and

Tories had been employed together by the King; and although the distinctions of a Whig ministry and a Tory ministry were more decidedly marked during the reign of Anne, yet Marlborough and Godolphin, who formed great part of the strength of the Whig ministry, were Tories; and Harley and St. John, who put themselves at the head of the Tory administration, had held, a short time before, subordinate offices under the Whigs. But the complete downfall of the Tory Administration, who had signed the peace of Utrecht, and the well-founded suspicion which attached to the whole party, of favouring the claim of James II.'s son, placed George I. entirely in the hands of the Whigs. At the same period, the financial difficulties which followed the winding-up of the war, and the great practical talents of Walpole as a statesman, contributed to give a greater importance to the House of Commons than ever, and to place within that House, if I may so express myself, the centre of gravity of the State. Besides these causes, much weight and authority, according to the opinion of Speaker Onslow, were added to the House of Commons by the Septennial Act.

We now find, therefore, a party ruling the country through the House of Commons; a species of

government which has been assailed with vehemence, with plausibility, eloquence, and wit, by Swift, and Bolingbroke, and the whole Tory party in the reigns of George I. and II.; by Lord Bute and the King's friends in the commencement of the reign of George III., and by a party of parliamentary reformers in our own time. The sum of their objections to it is this,—That it mixes and confounds the functions of the King with those of the House of Commons; that the King hereby loses his prerogative of choosing his own servants, and becomes a slave to his powerful subjects; whilst, on the other hand, the House of Commons, by interfering in the executive government, open their door to corruption, and, instead of being the vigilant guardians of the public purse, become the accomplices of an ambitious oligarchy. Now this objection, if good, is fatal to our whole constitution; for we have seen, in reviewing the reign of Charles I., that a King whose servants are quite independent of Parliament, and a Parliament which is adverse to all abuses of power, cannot exist together: submission from one of the parties, or civil war, must ensue.

The question, then, for us to consider is, not whether the government of the two first Princes of

the House of Brunswick was a corruption of the old English constitution, but whether it was upon the whole a good or an evil form of government.

The first consideration that must strike us is, that, upon the whole, the liberty of the subject was maintained. The chief exceptions to this remark are, the suspension of the *Habeas Corpus* Act on the discovery of Layer's plot, and the attainder of Bishop Atterbury. Of the latter I have already spoken. The suspension of the *Habeas Corpus* Act on Layer's plot has always seemed to me unnecessary; but it is impossible to form any correct judgment on this point, and it must not be forgotten that all the chief Jacobites of England were at that time intriguing at Rome to bring in the Pretender. These exceptions to the general liberty of the subject are trifling and temporary; few periods in the history of any nation have been so little disturbed by violations of personal freedom as that of the adminstration of Walpole.

Another remark nearly allied to the former is, that the triumph of party was not marked in England as it has been in nearly every republic that ever existed, ancient or modern, by a cruel and unsparing persecution of their adversaries. The history of the divisions of the parties of aristocracy

and democracy in the minor states of Greece,—of the parties of Marius and Sylla, of Cæsar and Antony and Octavius at Rome,—of the Guelfs and the Ghibelines, the Bianchi and the Neri, in Italy,—of the Catholics and the Hugonots in France,—is a history of proscriptions, confiscations, massacres, and murders; but in the reign of the first Prince of the House of Hanover, little severity and still less rancour is to be found. Although many of the Tories were known to be adverse to the Protestant settlement, yet little was done against them, besides the banishment of Bolingbroke, Ormond, and Atterbury. The temper of Walpole inclined him to mildness and moderation. He knew of many who corresponded with the Pretender, of whom he took no notice. It is said that, one day, Wyndham, or Shippen, made a violent speech, which excited a murmur, and a cry of 'Tower!' 'Tower!' among his opponents. Sir Robert Walpole rose; 'I know the honourable gentleman expects me to move that he be sent to the Tower; I shall disappoint his expectations, however, for I shall do no such thing.'

The strength of Walpole's administration lying chiefly with the House of Lords and the aristocratic part of the country, he was enabled to carry on for

many years a pacific system. Peace, at all times a blessing, was then most desirable. The politic union between the King of England and the Regent of France, took away all the fears so long inspired by the overgrown ambition of Louis XIV. of seeing Europe enslaved, and a king forced upon us by foreign powers. Thus the country, undisturbed either by invasions of liberty at home, or by wars abroad, enjoyed a respite from the violent contests in which she had so long been engaged. And, upon the whole, the people had reason to be satisfied with the government of Walpole. Montesquieu, who has most contributed to spread an admiration of the English constitution over the Continent, and to hold it out as a fit model for imitation, took his notions of it from this period. At the same time there was a fault in the general course of Walpole's government, the most fatal of any to the permanence of a spirit of freedom in a nation. With the view of soothing the angry passions which disturbed the early part of his career, he gradually weakened, and had nearly extinguished, every large and liberal feeling in politics. To maintain 'our happy establishment' was the great end of his administration; an object which, however praiseworthy, was little calculated to ex-

cite vigour of thought, or energy of character. For this, however, no blame is justly imputable to him. What we may complain of, with truth, is, that in his choice of means he showed a low opinion of human nature, and addressed himself rather to the interested views of individuals, than to any public sense of the benefit of the whole. Thus he went on depraving the times in which he lived, and the times again depraving him, till the State was divided into a number of low parties and petty chiefs.

The administration of Walpole fell at last, however, by unjust clamours about the right of search, and a general impatience for change. No government can withstand a combination of the stupid and the foolish, or, as Henry VIII. termed them, the 'dull party' and the 'rash party.' In England, the Tory party had always had the benefit of the weight and influence of the stupid part of the nation. The unlettered squires embraced with cordiality the notion of the divine right of kings. Addison has given a perfect picture of one of them in a number of the 'Freeholder.' The dog that has the sagacity to worry a dissenter, the squire's complaints of the progress of trade and commerce, and his resolution to resist any government that is not for non-resistance, are characteristic of the

Tory country-gentlemen of that day. Even at the time of the dissolution of Walpole's administration, Pulteney, in talking of the disposal of places, said, that the Tories, not being men of calculation, or acquainted with foreign languages, did not pretend to the higher offices of the State. The Whigs, on the other hand, had in their origin derived some support from the folly of mankind. The wisdom of Somers, and the steady patriotism of Lord Cavendish, did not excite so much enthusiasm as the handsome person of the Duke of Monmouth; and the story of the warming-pan brought as many adherents to the cause of the Revolution, as the *Habeas Corpus* Act and the Bill of Rights. The foolish were, however, naturally estranged from Walpole by his calm conduct, and the unpretending wisdom of his measures. They united themselves with the stupid, and formed, as might have been expected, an overwhelming majority in the nation.

It is astonishing to see how little, after twenty-five years of power, could be brought against Walpole, even when his enemies were in office. His conduct in the South Sea business appears upon the whole to have been extremely judicious. Corruption in boroughs to an extent at which their posterity would not blush, is indeed related by the

Secret Committee. Large sums, too, the disposal of which his agents persisted in keeping secret, are unaccounted for. The attempt to indemnify them from all proceedings in order to get evidence from them against their principal, failed in the House of Lords.

The effect of the long stagnation of public spirit in the country is lamentably seen in the changes of ministry which took place after the resignation of Walpole. Principle seems to have made no part of the faith of statesmen; and all political contention was reduced to a scramble for office, between little bands of men whose rank and fortune only rendered their conduct more contemptible. Lord Melcombe's diary affords a faithful and very disgusting picture of the manner in which these small factions rose alternately one upon the other, forming every day new combinations, and varying their connections in every possible way, without ever deviating into an honest and consistent line of public rectitude.

It is singular, and at the same time melancholy to observe, how much influence was retained by a person so totally devoid of clearness of head, and even of common manly spirit, as the Duke of Newcastle. By intriguing to overturn Walpole, his

colleague, and by bargaining in boroughs, he became the most powerful amongst the Whigs. But his incapacity and dishonesty were one of the chief causes of the ruin of the party, who did not for a long time recover the disgrace of having served under such a chief.

There is one man, however, whose life forms an exception to these remarks, and who did much to waken the country from the lethargy into which it was plunged. I mean, of course, Lord Chatham. He was in almost every respect the reverse of Walpole. Walpole lowered the tone of public men, till it became more like that of pedlars than of statesmen: Chatham raised his voice against selfishness and corruption, and his invectives even now make the cheeks tingle with indignation. Walpole acted upon the love of ease, the prudence, and the timidity of mankind: Chatham appealed to their energy, their integrity, and their love of freedom. It must be acknowledged that Walpole had some merits which Lord Chatham wanted. He pursued from the beginning one steady and, upon the whole, useful line of state-policy: Lord Chatham acted from the impulse of the moment; and if he followed his feeling of the day he little cared how inconsistent it might be with his

former sentiments. Walpole seemed to aim at what was most expedient, Chatham at what was most striking; the former secured the guarantee of France to the Protestant succession; the latter attacked her possessions and humbled her name. Walpole looked to prosperity, Chatham to glory; the one carefully amassed the means which the other magnificently dissipated. Walpole was successful nearly to the end of his life. The cause of his long power is to be found both in the steadiness of his conduct, and his care to unite together a large and respected party in favour of his government. Lord Chatham succeeded in nothing after the accession of George III. He had neither sufficient consistency of character to inspire confidence in those who were to act with him, nor did he set a proper value on the importance of party in this country. If Walpole had thought too much of individuals, Lord Chatham consulted them too little. Provided he made up his mind to a measure, he seems to have thought that he could always find men to carry it into effect. His temper made him reject or quarrel with those who were best fitted by integrity and general views to assist him, but who differed with him in the smallest point; and he sought aid from others

who flattered, ridiculed, betrayed, and supplanted him.

Hence it was that the political character of England was not raised out of the mire into which it had fallen, by the splendid talents, generous virtues, and lofty views of the first William Pitt, Earl of Chatham.

CHAPTER XXI.

GEORGE THE THIRD.—BEGINNING OF HIS REIGN.—AMERICAN WAR.

'Moreover, I have a maxim, that *the extinction of party is the origin of faction.*'—*Letter of Horace Walpole to Mr. Montague, Dec.* 11, 1760.

When George III. came to the throne, little apparent alteration took place in the internal government of the country. An Act was passed to continue the judges in their offices notwithstanding the demise of the crown. Although it was obvious that such an Act diminished in no way the power of George III., but on the contrary, took away one means of influence from the successor, yet this measure was represented as an act of unparalleled generosity on the part of the young king. Yet as a proof of royal patriotism, it is nothing; and, as an addition to the liberties of the subject, it is not worth mentioning. The Act of William III., which made the judges in-

dependent of the pleasure of the Crown, and gave them their offices during good behaviour, was the true security for their independence. What has been done since has been merely ornament.

The important feature of the new reign was the experiment of a new project of government. Among other disastrous consequences of the want of public spirit in England, was a total neglect of the political education of the young king; hence he came to be placed in the hands of men who had but recently shaken from their minds their allegiance to the House of Stuart. It occurred to these persons that, in the general blight of political virtue and public confidence, an opportunity was afforded for raising the household standard of the sovereign, and rallying around his person the old relics of the Jacobite party, with the addition of all who, in the calculation of chances, might think the favour of the sovereign as good an interest as the countenance of any minister whatever. To form and consolidate this party they studiously spread all the doctrines which place the whole virtue of a monarchy in the supreme sanctity of the royal person. They endeavoured to obtain a certain number of seats in the House of Commons, which, with the help of a proportionate quantity

of patronage, might make the tenure of any ministry uncertain. They made loud professions of honesty and of conscience, which, when examined, consisted in an obstinate adherence to certain narrow-minded tenets, and did not prevent the most shameful violations of sincerity and truth, whenever it suited their purpose to deceive and to betray. They assiduously planted their maxims of government in the mind of their royal pupil, and as he was naturally slow, obedient, good-tempered, and firm, he too easily admitted, and too constantly retained, the lessons of his early masters.

Almost everything conspired to favour the projects of this mischievous faction. The disunion of the Whigs; the contemptible character of the Duke of Newcastle; the inconsistency and vanity of Lord Chatham; the decay of Jacobitism; the predilection of the people in favour of the young king, the first of his family born in England, all strengthened the new sect. The prejudice of the nation against Lord Bute, as a Scotchman, was the only set-off against a host of favourable circumstances.

The system had flourished for some years in full vigour, when Mr. Burke gave the powerful exposition, and the sound and statesmanlike refutation of it, which we read in the 'Thoughts on the present

Discontents.' This, which is one of the few standard works on the practical art of government which the world possesses, did not, and could not immediately destroy the monster which it attacked. But it rendered a service to this country scarcely less essential, by instilling into the minds of young politicians, who at that time were greatly increasing in number throughout the country, those wise and beneficial principles which their Whig ancestors had practised, but which the old intriguers of that day had entirely forgotten.

The American War, disastrous as it was to the councils and to the arms of the country, was eminently useful in reviving the spirit of liberty. The speeches of Lord Chatham, the speech on conciliation with America of Mr. Burke, and above all the fervid eloquence of Mr. Fox, revived the genius of the Whig party, and made them truly that 'conservatory of free principles' which they must ever be, if they aspire to their proper place in the Commonwealth.

CHAPTER XXII.

THE SENSE OF JUSTICE.

'Sous quelque idée de légèreté et d'inconsidération qu'on se plaise à nous représenter le peuple, j'ai éprouvé que souvent il embrasse à la vérité, certaines vues, vers lesquelles il se porte avec chaleur, ou plutôt avec fureur; mais que ces vues ont pourtant toujours pour objet quelque intérêt commun, et d'une certaine généralité, jamais un intérêt purement particulier, comme peuvent être les ressentimens et les passions d'un seul homme, ou d'un petit nombre de personnes. Je hasarde même de dire, que sur ce point, le juge le moins faillible est la voix de ce peuple même.'—*Sully*, l. 14.

One of the conditions necessary for the maintenance of that species of freedom which excludes all arbitrary power, is, that the people should be ready to take part with the weak oppressed, against the powerful oppressor. Madame de Stäel remarks of the French people of her own day, that they perceive immediately where power lies, and always range themselves on that side. The truth of this observation may be demonstrated by referring to the events of the Revolution, or attending to what

happens in any one year in France. The quality essential to freedom, however, is one directly the reverse. The people ought to feel a continual jealousy of power; and when they see any man borne down unjustly, they ought to perceive immediately, that the cause of that man is the cause of the whole nation.

This is happily the case with the English people. Nothing but the sympathy of the people could have raised to such importance and celebrity the cause of Hampden, when he refused to pay a few shillings to the crown. The imprisonment of a Mr. Francis Jenkes, for making a patriotic speech in the Common Council of London, roused the indignation of all lovers of their country, and was the immediate cause of the Habeas Corpus Act.

Such, too, was the case of John Wilkes. Mr. Wilkes, though detested and despised by good men, as a hypocrite in public and a profligate in private life, was defended by all who loved their country, when arbitrary measures were resorted to for the purpose of oppressing him. He was arrested by virtue of a general warrant, wherein his name was not mentioned, and he was designated only as the author of the North Briton, No. 45. At the same time his papers were seized, and he was by this

means discovered to be the author of an obscene libel, called the 'Essay on Woman.' It is evident that the authority to issue general warrants was a very dangerous power, and might have been used to renew those arbitrary arrests which took place under the Stuarts. Hence all the friends of freedom espoused the cause of Wilkes. Lord Chatham, then Mr. Pitt, spoke with abhorrence of the man and of his works, but with indignation of the means that had been used to oppress him; and the country who would have rejoiced to have seen him legally punished, would not allow him to be unjustly persecuted. They felt not for Wilkes, but for the law; they would have praised the jury which convicted him; they censured the minister who oppressed him; and in the cry of Wilkes and Liberty, they adopted a contemptible person for the sake of a sacred principle. A motion against general warrants was defeated by a small majority in the House of Commons; but Wilkes obtained at length large damages against the ministers who had abused their power, and put an end to general warrants for ever. So I trust it may always be, when any individual, however humble, however odious, or however despicable, is pursued by illegal or unjust methods!

CHAPTER XXIII.

OF AN EXTREME REMEDY AGAINST THE ABUSES OF POWER; AND OF MODERATION IN THE USE OF THE REMEDY.

. . . Esto
Liberque ac sapiens.—*Persius.*

As a very numerous body are found incapable of transacting public affairs with that secrecy, or of deciding upon them with that celerity, which the foreign relations of a State so often require, every wise State has found it expedient to transfer a large portion of power out of the hands of the people, for whom all power is held, and to entrust it to a single person or select council. Hence the great council of Venice was, by the advice of the wisest senators, excluded by degrees from all deliberations which required delicacy and dispatch. Hence the republic of Holland found it necessary to name a few persons to whom all foreign negotiations were confided.

But for whatever purpose power may be confided to a few persons, or however worthy they may be of the trust reposed in them, human nature is such, that there ought always to remain with the people an extreme remedy by which they may punish the abuse, or restrain the power itself that has been abused. In States really free this extreme remedy will always be found to exist, either by custom or by law. Thus the Roman people, when they felt themselves aggrieved, retired to the *Mons Sacer*, or refused to be inscribed as soldiers in the army that was about to march against the foreign enemy. There could not be apparently two more dangerous expedients; but such was the moderation of the Roman people, that I know not they ever pushed their resistance beyond the bounds of reason. Indeed, the long period that elapsed before the plebeians could be elected to any office in the State, and the many years that followed after the law passed allowing them to be military tribunes, before any plebeian was really chosen, are sufficient proofs of their temperance, both in advancing a claim and in making use of a right.

The English have, in the same manner, an extreme remedy. If the king abuses a just, or attempts to exercise an oppressive power, the repre-

sentatives of the people have the right to refuse the money required to carry on the government This remedy, however, was for a long time far from being so efficacious as those employed by the Roman people. In spite of the resistance of the nation, Charles II. and James found means, with the aid of packed Parliaments, and drafts on the French treasury, to slip the bridle from their necks. In fact, until the expulsion of the Stuarts, our kings enjoyed a revenue independent of Parliament, which enabled them to keep their Commons out of sight in ordinary times. The parliamentary check was made perfect at the Revolution; but the influence of the Crown in the body which ought to exercise it, has continually deadened its effect. The voice of the people, however, has sometimes enforced the constitutional interference of the House of Commons. The most remarkable instance, perhaps, of the use of this right took place at the end of the American war. The House of Commons declared by a resolution that the further prosecution of offensive war on the continent of North America, tended to weaken this country, and to prevent a reconciliation with America. An address, in conformity to this vote, having been carried to the throne; and the King

having returned a gracious answer, complying with the address, the House of Commons voted that they should consider as enemies of his Majesty and this country all those who should advise the further prosecution of the war in North America, for the purpose of reducing the revolted colonies to obedience by force. In this, as in a few other instances, although the word *supplies* is not mentioned, it must always be understood; and there is, in fact, a tacit menace of refusing supplies in every interference of the House of Commons with the exercise of the prerogative.

This power, it is quite clear, would enable the House of Commons, if so disposed, to declare themselves the sovereigns, and to take away every efficient prerogative from the Crown; but such is the moderation of the English people, that they have never desired so formidable an increase of their own power or that of their representatives. At the Revolution, when the whole question was open, they did not take away a single grain of the powers necessary to maintain the monarchy; and, I am convinced, the true reason that the King maintains his prerogative and the House of Lords their privileges unimpaired at the present day, lies more in the temper of the nation than, as some

would teach us, in the present composition of the House of Commons. The country has a deep-rooted affection for kingly government, and would highly resent any attempt to change or destroy this keystone of the Constitution: nor, as far as I can observe, is this sentiment confined to particular orders of men; it pervades the whole country from one end to the other. There appears to me, I must confess, as great an attachment to monarchy in the people of Yorkshire as in the proprietor of Old Sarum; and fully as much loyalty in the farmers in Norfolk as in the corporation of Devizes.

CHAPTER XXIV.

CRIMINAL LAW.

'The discretion of a judge is the law of tyrants: it is always unknown: it is different in different men: it is casual, and depends upon constitution, temper, passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly, and passion to which human nature is liable.'—*Lord Camden.*

THERE are some advantages in the absolute monarchies of Europe over the free Government of England on the subject of criminal law. On the one hand, it must be confessed, the free Government will be sooner impelled by the progress of enlightened opinions to abolish torture and cruel modes of punishment; and will be forced to relinquish, as contrary to its nature, all iniquitous proceedings against state-criminals, and all bloody penalties on religious dissent. But, on the other hand, it must be said that the legislators of a free state are so much engrossed by the race of political rivalry, that criminal law meets with little atten-

tion; and that the Parliament of England, when they do make laws on the subject, are far from being as impartial as an absolute sovereign; for they are continually the objects of the burglaries and larcenies against which they direct their thunder. The monarch, little affected by shop-stealing and petty pilfering, does not legislate till he has received general complaints, and then does it with calmness and impartiality. But a merchant or squire, goes into the House of Commons, exasperated by the loss of his broad-cloth, or the robbery of his fish, and immediately endeavours to restrain the crime, by severe penalties. Hence it is, that every man judging that to be the most deadly offence by which he is himself a sufferer, the Parliament has permitted the statute-book to be loaded with the penalty of death for upwards of two hundred offences. Among the crimes, so punishable, we find the offences of cutting down a tree; being found with the face blackened upon the high road; being in company with the persons called gipsies. These continued to be capital crimes till the year 1820, and one of them at least still longer.

These extreme cases are not, however, the most mischievous. The absurdity of the law is an antidote to its cruelty. There are other offences, but

very lately punishable with death, and some still capital, which are really in themselves very serious crimes, but not of so atrocious a character as to reconcile any humane man to their being visited with so severe a penalty. Of this kind are many offences against the bankrupt laws; privately stealing from the person; stealing from a dwelling-house to the amount of 40*s.*; privately stealing from a shop to the amount of 5*s.* and many others. The mischiefs produced by these sanguinary laws are not however, as might have been expected, a very great frequency of capital punishment, and general insensibility in the people.

The evils peculiarly felt are two:—First, as it is justly stated by Mr. Justice Blackstone, there is a general disposition not to convict of a crime to which an inordinate punishment is affixed. Cases are innumerable in which juries have found goods of great value, and even £10 and £20 notes, to be under forty or five shillings value, in order not to convict a thief of a capital offence.*

Mr. Harmer, who has been solicitor for two thousand persons condemned to death, informed the Criminal Law Committee that an old offender always

* See the excellent speech of Mr. Buxton on the Forgery Bill, 1821.

preferred being tried for a capital offence, as it gave him a better chance of an acquittal. It is instructive to reflect that something of the same kind happened at Athens. A criminal, when convicted, was asked before the people how he would be punished, and an old offender always named the most severe punishment, to excite compassion in his judges. It was partly because Socrates, instead of following this custom, replied that his sentence ought to be that he should be kept all his life at the expense of the State that he was condemned to death.

Notwithstanding this well-known disposition of human nature, so accustomed are we to rely on the efficacy of capital punishments, that in any discussion on repealing a criminal law, the question in many men's minds always is, not whether the offence is actually prevented by that law, but whether the offence is sufficiently grave to deserve that it should be prevented by so severe a method. The members of both Houses of Parliament still consult their own sense of this matter, instead of looking to that of jurymen.

Secondly. Another great evil is the uncertainty of the law. Two men, for instance, are tried at Launceston for sheep-stealing; both are found

guilty; one is condemned to death, and the other to be transported for seven years to Botany Bay. It is evident there is no proportion in the punishments. What is the reason? The one has a good character, the other a bad one. So that in England a man is hanged, not for the crime of which he is found guilty, but for the general course of his life. Now this is a matter far above any earthly tribunal. Such a system leads to injustice, cruelty, and confusion. It takes away the only motive for capital punishment, viz. the benefit of example. It does little or nothing towards the repression of the crime punished. It makes the punishment of death useless, and therefore cruel; for every criminal will hope that his character will not be found so bad as to make him forfeit his life. It puts a man upon his trial for actions which the law does not profess to try, and upon which he cannot be prepared with a defence. Thus it happened a few years ago, that a man of notoriously bad character, after going through a course of larceny and burglary with impunity, was at last, to the great surprise of his neighbours, his jury, and his prosecutor, hanged for cutting down young trees.*

* See the evidence respecting this case given before the Criminal Law Committee.

There is at present greater reason than has ever yet existed, to hope for a reform in the criminal law. Many persons however have thought it extremely dangerous to admit that our present law was in such a state as to require reform. Absolute sovereigns have not been affected by this danger. The King of Prussia (Frederick the Great), during part of his long reign, placed his whole system of law under discussion, and during a remaining portion a project of new laws was under the eye of the public for general criticism and consideration: the King thus taking away from the authority of the old law without substituting anything in its place. Many of the sovereigns of Europe have altered their whole criminal jurisprudence. Even the Pope has within the last few years promulgated a new code on this subject. Why is it, that all these governments have undertaken the task without fear or hesitation, and that a party in England is so fearful of any innovation whatever in our old system? The reason I believe to be this,—that a very large portion of the higher ranks in England never have understood, and never will understand, the real security of the English Government. These persons, seeing authority continually attacked, imagine that the throne will be subverted, if any part

of its trappings are removed. They are not aware that the real foundation of royalty and aristocracy in England is the opinion the people have of their utility to the country, and that the retaining any absurd or bigoted or cruel institution, instead of preserving, undermines and destroys the respect paid to the assemblies which have the charge of improving and amending, as well as of strengthening and preserving the volume of our laws.

With respect to the criminal law, my own notions of reform would go a great way. There cannot be many offences to which capital punishment ought to be attached.

All wilful acts tending directly to inflict death ought to be punished with death. Murder, stabbing, shooting at, burning of dwelling-houses, or buildings contiguous to dwelling-houses, and setting fire to the clothes of a person, are crimes of this description.* Highway robbery, and burglary, without any of these circumstances, when it is clear that property and not life has been attacked, might more properly be punished by long confinement, than by executions. All other crimes are properly the object of what are called secondary punishments, *i. e.* punishments not capital.

* But see Introduction.

The question of secondary punishments is the most difficult of any. The words of Mr. Harmer afford perhaps the best rule, shortly expressed, on this subject. 'If I were asked,' said this gentleman, in an examination before a committee of the House of Commons, 'what description of punishments would, in my opinion, be productive of benefit, I would answer, Such as might force the delinquent into a course of discipline wholly opposite to his habits. Idleness is assuredly a part of his character, which industry would counteract. Set him to labour. He is probably debauched, and abstinence would be advantageous to both his mind and his body; apply it. He has been accustomed to dissolute companions, separation from whom would essentially ameliorate him: keep him in solitude. He has hitherto rioted in uncontrolled liberty of action. I propose that he should be subjected to restraint, and the observance of a proper decorum.'

CHAPTER XXV.

PUBLIC SCHOOLS.

'As it is in the body, so it is in the mind; practice makes it what it is; and most even of those excellences, which are looked on as natural endowments, will be found, when examined into more narrowly, to be the product of exercise, and to be raised to that pitch only by repeated actions.'—*Locke, of the Conduct of the Understanding.*

THE education of youth, which has employed so many pens, produced so many sublime writings, and undergone so little practical alteration, is not to be thoroughly discussed in a few words. Some remarks, suggested rather by observation of the world than by any original speculation, may perhaps be allowed.

Men of enlarged views, and hearts glowing with the love of mankind, have often conceived that youth might be taught more knowledge than is distributed and less vice than is permitted or winked at in the public schools of England. With this project in their heads, and the most laudable love

of their children in their hearts, many parents have given their children a private education. They have instructed them in ten branches of knowledge instead of two, and have preserved their morals and their health during the first eighteen, or perhaps twenty years of their life. But how often have we seen these promising flowers drop off without being succeeded by fruit in due season? The lessons which are learnt by a boy in the lingering and lifeless manner of a private study, without the excitement of emulation, perhaps without the fear of correction, make no lasting impression on the mind. The restraint of a nursery of twenty years, gives a zest to the pleasures and the follies for an indulgence in which boyhood alone can be any palliation. The period when the talents and strength of the man ought to be unfolded is wasted in the new pursuits of idleness and debauchery. At the same time, the habits contracted at home, where the young patrician met with no equal, unfit him for the rub of the great world, and fix for ever those defects of temper which early contradiction and early society might have extirpated. Such is often, though not always, the result of an education, intended to produce a prodigy of perfection, and laid out with the hope of giving its un-

happy object a pre-eminence over the ill-trained generation of his equals and contemporaries. The mistake in these instances seems to arise from the want of considering, that the object of education is not only to store the mind, but to form the character. It is of little use that a boy has a smattering of mineralogy, and is very fluent at botanical names; it will be of no avail to him to talk of argil and polyandria, if he cries when he loses at marbles, and is lifeless or timid when he is obliged to play a game at cricket. Now a public school does form the character. It brings a boy from home, where he is a darling, where his folly is wit, and his obstinacy is spirit, to a place where he takes rank according to his real powers and talents. If he is sulky, he is neglected; if he is angry, he gets a box on the ear. His character, in short, is prepared for the buffetings of grown men,—for the fagging of a lawyer, or the fighting of a soldier. Now, this is of much more importance than the acquisition of mere knowledge. Many men only begin to acquire their knowledge between twenty and thirty, few men change their characters after twenty. Considering the question in this view, it is of little importance to enumerate the names of eminent men in England, who have not been

brought up at public schools. Many of these rose from middle life, and to them my argument does not apply. The son of a tradesman or a farmer meets hardships enough, without being sent to any school; he is ordered to serve a customer, or look after the haymakers; and learns practical life much sooner than any gentleman's son can possibly do. If the view that has been here opened is a right one, parents ought to beware how they withhold from their sons, if sufficiently strong and healthy, the advantages of a public school. The democratic character of the nobility of England, the democracy of the aristocracy, if I may be allowed so to call it, is very much to be attributed to the gregarious education they receive. In this manner, her public schools form a part of the constitution of the country. If they produce some vice, and a good deal of rudeness, they subdue pride, selfishness, and conceit; they create emulation, friendship, and a manly strength of mind. Let any one watch the education of a youth of high expectations in Spain or Italy: he will see him followed everywhere by a servile flatterer, under the name of a preceptor, learning nothing but the varnish and the falsehood of the world,—the idol of his parents, and the torment of their friends. Men

of sense, who have undergone this dangerous ordeal, all speak with envy and admiration of the public schools of England.

Let it be granted, however, that more may be taught by private tuition. I am far from agreeing that, for this reason, the boy of the private tutor will have any advantage over the boy of the public school. His knowledge will be out of place; his exertions of mind will fail of their effect, because they will not fit in with the minds of other men. His superiority in some branches of learning will be unheeded, and his inferiority in others will make him ridiculous. Upon the whole, there is perhaps no point from which a man can start, in any profession or pursuit, so advantageous as a complete and thorough knowledge of what is known by other young men, among whom he wishes to excel.

It being conceded that a boy of high expectations ought to be brought up at school, I am not disposed to contend that the education of our public schools is exactly what is right, or that it is all that is right. These schools were instituted at a time when all knowledge was contained in the Greek and Latin classics, and no sound opinion or polished taste was to be found out of the learned languages. From this groundwork, however, the moderns have

raised a prodigious edifice, both of science and of literature, of the whole of which our school education, from eight to eighteen, takes no notice whatever. Not that I would cram the mind of a boy with botany and mineralogy.* The first thing to learn is how to learn: '*Il faut apprendre à apprendre;*' and for this it is requisite that the first thing taught should be difficult to learn and be retained when it is learnt. I know nothing so good for this purpose as the Latin grammar. Boys, it is said, do not understand it. They do understand, however, that a nominative case goes before the verb; and they come in a short time to learn where each part of speech must be placed, and how it depends upon another. If Mr. Locke is right in his estimate of the importance of words, this is a point of great consequence. And who can doubt that he is right? It is to a dogged application to the Latin grammar perhaps that the precision of men,

* See Dr. Johnson's opinion of the superior importance of moral to physical knowledge in his 'Life of Milton.' It must be said, however, in abatement of his doctrine, that if a man of the world is ever to learn mathematics or chemistry, he must learn them before he leaves college; Plutarch and Hume, he will read for his amusement; Euclid and Newton, only by compulsion: human life is a book open before him; the mysteries of nature are to be known only by interrogation.

when compared to women, in this country, is in great part to be attributed.*

The Latin grammar learnt, easy prose, then the poetry of Virgil, some arithmetic, the Greek grammar, Homer, some geometry, and a little geography, might come in their due order. Above all, I would make the boys learn faithfully an abridgment of the History of England, and of the first and last volumes of Blackstone.

French should be learnt early, in order to acquire the pronunciation, and because it is the general language of Europe; German and other languages, very sparingly. It will be sufficient to lay a foundation for learning, at a more mature age, those parts of knowledge that are likely to be sought voluntarily, and may be acquired easily.

I know not whether it would be practicable to introduce improvements of the kind I have mentioned into our great public schools. If the masters should resist it, it seems to me that an excellent opportunity for making a good school is afforded by the Military College at Sandhurst. It is very right that a certain number of the sons of men who have died for their country should be brought up at the

* I hear with pleasure that the masters of our public schools have agreed upon an improved Latin grammar. (1864.)

expense of the State; but it is a very wrong thing to bring up a set of young men for military service, totally separate from all other classes of the community.

What could be easier than to make a foundation for a certain number, with the qualifications of being the sons of poor officers, or officers' widows, who might afterwards choose their profession: and to institute at the same place a school where education might be conducted in a manner suitable to the knowledge of the present age?*

As it is at present, there is no doubt that women of the higher ranks have much more knowledge and information, when their education is finished, than men have. But I cannot see any reason why our young men should not, while they have the advantages of public schools, at the same time be able to do a sum in the rule-of-three, and make themselves masters of the fact that James I. was not the son of Queen Elizabeth.†

* This is done to some extent at Wellington College. (1864.)

† All the improvements suggested in this chapter are either made or making, and the process will be greatly accelerated by the excellent Report of the Public Schools Commission. (1864.)

CHAPTER XXVI.

POOR LAWS.

'Generally it is to be foreseen (*provided*) that the population of a kingdom, especially if it be not mown down by wars, exceed not the stock of the kingdom by which it is to be maintained.'—*Bacon.*

THERE is nothing, perhaps, in the whole state of England more threatening to its tranquillity, and the permanence of its Constitution, than the present administration of the poor-laws. The perversion which has been made of them from the original meaning of the statute of Elizabeth, has at length fallen most heavily upon those who thought to draw from it a selfish gain.

The statute of the 49th of Elizabeth seems to have had its rise in a general increase of idle poor throughout the country. The notion that this increase was owing to the dissolution of the monasteries is now given up; it having been clearly shown that the same complaint was made in Spain

about the same time.* It is more probable that the introduction of legal order, and the cessation of internal war not long before, both in England and Spain, threw upon society a great number of vagabonds, who were accustomed to live by vagrancy and plunder. The Act of Elizabeth directed that the old and impotent should be provided for, and that the strong and healthy should be set to work. The first of these two directions is the law of a tender and humane people, and will, I hope, ever remain upon the statute-book of England. The second direction is not equally easy of execution. A few casual beggars, indeed, might be provided for in this way; but when, from stoppage of trade, or any other cause, there exists a superabundant population, it is manifest that any work which could be done by the unemployed, would only be augmenting the stock of a market already overflowing. When this was found to be actually the case, the overseers, instead of furnishing work, supplied the unemployed with money. With the convulsions of commerce, the issue of a fictitious currency, the vast increase of taxes, and, above all, in the years of scarcity during the late war, a new

* This important fact was first brought to light in the 'Edinburgh Review.'

difficulty arose :—men who had large families found themselves unable to support them, although they were themselves employed, from the very low rate of wages compared with that of food. Instead of a rise of wages, the natural and obvious remedy for such an evil, it was agreed that a certain sum of money should be paid for the support of each child at the house of his father. In this provision, introduced under the pressure of temporary distress, the farmer saw a means of reducing the price of labour. Having the market of labourers overstocked, and therefore at his command, he refused to give to the unmarried labourer more than was sufficient to support life; he gave the same to the married labourer, and paid out of the poor-rates the exact sum necessary for the subsistence of the labourer's children. By this scheme the ignorant employer thought he had reduced the price of labour to the lowest possible; and there have not been wanting men of enlightened minds disposed to exalt the scheme as the perfection of rural economy. The natural consequence of such a scheme, however, was in the first place to lower the character of the labourer: to make him pass his life in dependence, and see himself, instead of being able to rear an industrious family from the

savings of his wages, reduced to the condition of a public mendicant. This consequence, however, would not have given any disquiet to the employer; but there is another as certain and as necessary; and that is, that marriages will no longer be regulated by the demand for labour; and that a labourer, seeing that his children will be fed out of the public fund, will marry when it suits his inclination, without a penny in his pocket. Hence an immense growing population, with a defective and diminishing market; a rapid supply, without any adequate demand. And there is no reason why the evil should not continue to increase, until, at length, the whole profits of cultivating the land are swallowed up by the expense of maintaining a colony of useless mouths. If that should happen, the farmer and the labourers must fall together; and there will be thrown upon society a number of people ignorant of all duties, deprived of all sense of independence, and accustomed to derive their means of subsistence without labour, from the public funds. Such a result, it is manifest, would be more calamitous than any revolution that has yet happened in the world. Happily, the farmers have at length felt the evil themselves, and they endeavour, by one way or another, to apply a remedy.

Much, if not everything, may undoubtedly be done to prevent the mischief of the poor-laws, where it has yet made no great progress, and the farmers are enlightened and liberal. Good wages, and a constant system of industry and improvement, will employ the labouring people *as long as things continue in a prosperous and steady course.* Labourers themselves undoubtedly prefer the hard-earned bread of independence to the stinted and litigious charity of an officer of the poor. It is only a bad system on the part of the rich that can debase the indigent.

The evils of the poor-laws have latterly been so great as to incline men to wish for their total repeal. But, upon consideration, I am inclined to think that, great as is the mischief of the present system, the entire abolition of it would be still greater. In a country, subject to such violent transitions from the revolutions of trade and commerce, it would be cruel and inhuman to expose the labouring classes to the ruin that would follow a period of agricultural or manufacturing distress. The poor laws must be pruned, not rooted up; the knife, and not the axe, must be used.

CHAPTER XXVII.

WAR WITH THE FRENCH REPUBLIC.

'It is imprudent to attack a people who are divided amongst themselves, with a view of conquering them, in consequence of their disunion.

'There was such disunion in the Roman republic between the people and the nobility, that the inhabitants of Veii, together with the Etruscans, thought that they could extinguish the Roman name by taking advantage of these dissensions. Having raised an army therefore, and made incursions upon the territory of Rome, the senate sent against them Cneius Manlius and Marcus Fabius, whose army encamping near the enemy, the people of Veii did not cease from attacking, both by arms and by reproaches, the Roman name; and such was their rashness and insolence, that the Romans, who were disunited, became united, and engaging the enemy, defeated and routed them. We see therefore how much men deceive themselves, as we have before observed, in the line of conduct they adopt, and how it frequently happens that, in thinking to obtain an object, they lose it. The people of Veii believed, that by attacking the Romans disunited, they should defeat them; and the attack, on the contrary, caused the union of the Romans, and their own ruin: for the causes of dissension in republics are generally idleness and peace; the causes of union are fear

and war. . . The people of Veii therefore were deceived in their opinion, and were, in short, in one day overcome by the Romans. And so for the future will be deceived whoever, in a similar way, and for a similar cause, shall think to oppress a nation.'—*Machiavel, Discourses.*

'The people of this country loved their Constitution. They had experienced its benefits; they were attached to it from habit. Why then put their love to any unnecessary test? Their love by being tried could not be made greater; nor would the fresh burdens and taxes, which war must occasion, more endear it to their affection. If there was any danger from French principles, to go to war without necessity was to fight for their propagation.'—*Fox's Speeches, Feb.* 1, 1793.

The war against France, undertaken in 1793, exemplified at its commencement the wise observations which I have quoted from Machiavel. The more apparent the attempts of the Allied Powers to regulate her internal government, the greater her vigour, the more brilliant her victories, and the more extensive her conquests. At length, tempted by military trophies and successful treaties, she confided herself to a sovereign who, abusing his genius and his force, endeavoured to make himself despotic lord of the whole continent of Europe. The Whig ministry of 1806 found it impossible to make peace with him; and with few exceptions, all parties in England agreed in thinking the continuance of the war just and necessary. At length, drunk with un-

exampled power and glory, and irritated by a perpetual thirst of action, the Emperor of France carried his great army of conquerors to perish amid the frosts of Russia. The nations roused themselves, raised the cry of independence, and hurled the conqueror from the throne. The republic had triumphed, the universal monarchy was conquered.

By a singular fortune the end of the war, however different in character from the commencement, was equally destined to prove the sagacity of Fox. The few enthusiastic Jacobins of 1793 were converted, in 1817 and the following years, into hundreds of thousands of malcontents. The pressure of sixty millions of taxes have indisposed more sound and loyal men to the Constitution of their country, than the harangues of Citizen Brissot and the fraternizing decree of November could have done in a hundred years.

CHAPTER XXVIII.

LIBERTY THE GREAT SOURCE OF THE WEALTH OF NATIONS, AND ESPECIALLY OF THAT OF ENGLAND.

'Liberty, the parent of commerce; the parent of wealth; the parent of knowledge; the parent of every virtue!'—*Speech of Sir James Mackintosh, on the Foreign Enlistment Bill.*

THE object of political economy, it is well known, is the wealth of nations. Quesnay, who is generally styled the inventor of this branch of knowledge, considered agricultural labour as the only source of public wealth: Smith superseded him, and taught that wealth consisted in all material products. He therefore called the labour which raised such products from the earth, or which added a value to them by industry, productive labour; while he styled the labour which neither created such products, nor added a value to them, unproductive. The first class included agriculturists and manufacturers; the second, kings, judges, clergy, soldiers, actors, etc. M. Say has since amended this definition,

and has proposed to include under the head of productive labour all labour which is useful, whether of body or mind. Thus he considers the labour of a professor of civil law as valuable as that of a weaver of stockings. M. Say, however, though he makes this distinction, very soon loses sight of it, and in the rest of his work we find little traces of the opinion. The opinion of Adam Smith still remains the corner-stone of his own system, and of that of his disciples.

Without discussing these definitions, which are not very scientific, I conceive the object of national economy to be, to remove obstacles that may impede the progress of a nation to wealth.

In entering upon the inquiry how this object may best be effected, let us take a view of those states which history or the present time exhibits to our view as peculiarly prosperous, or peculiarly wretched. In the latter, we should perceive a languor, a distaste to labour, an indifference to emulation, narrow parsimony, and a wretched way of living; in the former, we should observe incessant activity, vigorous enterprise, the arts flourishing, learning encouraged, comfort and ease diffused through every class. Proceeding to inquire into the circumstances which produced this difference, we should find

liberty to be the great exciting cause of industry in the states whose prosperity has been the most remarkable.

It appears certain, that wherever the spirit of the Government itself has not repressed the love of gain, as at Sparta, the industry of free citizens has excelled the efforts of slaves, pampering the luxury of their masters. Let us turn our eyes to the proud merchants of Florence, Venice, and Holland, making their little states the envy and terror of great monarchies. Let us refer, on the other hand, to the people of France, living in wretched dependence on arbitrary taxes, and forced to conceal their food from dread of their government. Let us pause a moment to consider the different situation of England and Spain. By the report of a committee of the Cortes, made last year, it appeared that the utmost amount of taxation which, in their judgment, Spain could bear, was about £6,000,000; in the same year, England and Scotland cannot have paid less than £60,000,000, and, including poor rates and county rates, nearer £70,000,000. What is the cause of this prodigious difference of wealth? Is it that the English laws on trade and commerce are so greatly superior in wisdom to those of the Spaniards? This can hardly be

alleged to be the case: our own laws on these subjects were, up to the peace of 1814, the products of the mercantile system, the most absurd and irrational of any system of national economy. Is it that Spain entirely neglected the new lights of the age? On the contrary, she endowed a professorship of political economy in the University of Salamanca; a step which was not taken, that I know, by any other great state in Europe. She has had, in the course of the last century, ministers who had the most enlightened views of public wealth; but, despotism blasted all their efforts, and every tree they planted after a few feeble shoots, withered and died beneath its poisonous influence;—the very desire of accumulation was wanting, for all the privileges of civilization, the expanded mind and generous knowledge of freemen, were forbidden by the Inquisition. England, on the other hand, blest with equal laws, and affording scope for the expansion of the best faculties of man, has been rewarded for her liberality by the efforts which industry, genius, and talent will always make when not impeded by despotism.

The first and main cause of the wealth of nations then is liberty. Passing from this part of the subject, the next great incentive to industry is order.

This can only be procured by the union of religion, morality, and law. It is order which assures to every one the tranquil possession of the wealth that he may have acquired; it is the regular authority of the law which confers a value on a house in Middlesex above one in Turkey. Who would lay out his capital in purchasing the fee-simple of the finest estate in the wilds of Tartary?

Connected with order, and the respect paid to property by the law, is good faith on the part of the government. Any man would prefer the security of a banker of Amsterdam to that of the Emperor of Morocco; or the word of a London coal-merchant, to the most solemn bond of the Emperor of Austria. These three things, therefore, may be considered as the true springs of national wealth—freedom, order, and public faith.

Next to these great wheels, is a wise disposition of the economical laws of the nation. The whole of the precepts, however, to be given on this subject resolve themselves into one—remove all obstacles to industry. As far as wealth is concerned, the fewer restrictions the better. This is the great truth proved by Smith, and his coadjutors in France and England, in opposition to the absurdities of the mercantile system.

'Laissez faire, et laissez passer,' said the French merchant to Colbert, and after two centuries of struggle against restrictions, monopolies, protections, bounties, differential duties, and regulations for industry and wages, we can say nothing more wise or more concise.

CHAPTER XXIX.

NATIONAL DEBT.

'The common people do not work for pleasure generally, but from necessity. Cheapness of provisions makes them more idle; less work is then done, it is then more in demand, proportionally; and of course the price rises. Dearness of provisions obliges the manufacturer to work more days and more hours; thus more work is done than equals the usual demand; of course it becomes cheaper, and the manufactures, in consequence.'—*Franklin's Political Fragments.*

THE capital of the national debt, at the accession of George I., and when all the accounts of the great War of the Succession may be supposed to have been settled, amounted to £54,000,000, the interest to £3,351,000. Sir Robert Walpole instituted a sinking fund, on which great eulogiums were made, and of which great hopes were entertained. In 1739 the capital of the debt was £46,954,000, the interest £1,963,000; so that he diminished the interest about £1,400,000, and the

capital about £7,000,000. The Spanish war, however, which commenced in 1739, increased the capital of the debt by £31,300,000, and the interest by £1,096,000. The peace which followed diminished the capital by £3,700,000, and the interest by £664,000. But in 1763, after the Seven Years' War, the national debt amounted to £146,000,000.

From that time to the breaking out of the American war, the national debt was diminished by £10,739,000.

At the close of the American war the national debt amounted to £257,000,000.

The celebrated sinking fund of Mr. Pitt, established in 1786, reduced the national debt, during the peace, by £4,751,000, and the interest by £143,000.

On the 5th of January, 1817, after the close of the war, the national debt amounted to £848,282,247.

In four years from that time, that is, on the 5th of January, 1821, the debt amounted to £845,100,931, being a diminution of little more than three millions.* During more than a year of

* Account of the Total Amount of the National Debt of England and Ireland, presented to the House of Commons, Sess. 1821.

this time a new sinking fund had been in operation, voted by Parliament to amount to £5,000,000 a year.

Such has been the alternate progress of national debt and sinking fund,—the one advancing by giant steps, and the other, although much vaunted, never having, in the course of a century, made half the progress that was made by the national debt in the single year 1815. He must be a sanguine man indeed who expects the sinking fund to overtake his opponent.

Such being the state of the case, it is more than ever necessary to examine what this debt is, what are its effects on the prosperity of the country, and what is likely to be the ultimate result. This last inquiry is indeed one of great uncertainty. Causes the most unlooked-for may intervene, and entirely change the direction of political events.

The first operation of the national debt is as follows:—The minister borrows, we will say £300, of a merchant who has the money in his coffers. He engages to pay £15 of interest. For this purpose he lays a tax of £5 on a landed proprietor, another £5 on a farmer, and another £5 on a tradesman, all supposed for the present to have equal incomes, and to pay the tax equally. The

first operation of the tax is generally the following: The farmer and tradesman add the tax to the price of their commodity. Thus the tradesman pays a part of the tax of the farmer, and the farmer part of that of the tradesman. A tax, it is evident, still remains upon the shoulders of each. The tradesman and farmer must therefore either work harder, and produce more of their own commodity, or they must be contented with less profits, retrench their expenses, and buy less of the commodities of their neighbour. The first takes place in a flourishing condition of a community, and the second in a poor, weak, and exhausted state. It is by the continual efforts of men to produce more, and to accumulate, that a country rises to prosperity; it is by the saving and narrowing of accumulation and expense that a nation falls into decay.

There is another manner in which a tax is paid that is still worse. It is by diminishing the profits of a particular trade. Thus, if a tax of great amount had been laid on shoe-buckles, the sellers of that article, unable to obtain the payment of the tax, would have been obliged to content themselves with less profit. The trade which is thus unequally taxed is soon abandoned.

We must not lose sight, however, either of the

landed proprietor or the stockholder. The proprietor, it is evident, must pay, besides his own part, a part of the tax of the farmer and the tradesman, and he has no means of repaying himself. For this reason the economists supposed that the proprietors of land paid all the taxes. But they may, if they please, retrench their consumption, and that too with much more ease than the tradesman; as a livery-servant is more easily parted with than an artisan.

The stockholder, in the meantime, if he is a consumer, pays to the tradesman and the farmer part of the tax which is raised for his benefit. But he has greater facilities of avoiding expense than any other branch of the community.

There can be little doubt that, for a certain time, a national debt is beneficial in its effects. It promotes a rapid circulation of money; it brings new capitalists into the market, with more enterprise and more invention than the old proprietors of land; it obliges the labourer to work harder, and at the same time produces new demands for labour. But when the national taxes have increased to a certain amount, these effects are nearly reversed. Prices are so prodigiously increased to the consumer, that all prudent men retrench both their

consumption and their employment of labour. The greater proportion of the general income of the country is transferred from the hands of men who have the means of laying it out in agriculture or manufactures, into the hands of great merchants whose capital overflows the market, and returns again upon the land in the shape of mortgages. There is, at the same time, a great want of money in some quarters, and a great abundance in others. Such are the effects of a large national debt upon individuals. But there is another view in which this debt is an unmixed evil. I mean, as it impairs and exhausts the resources of the State. The expenses of former wars render it at last difficult for a nation to raise taxes for its defence. So much of the rent of the landholder is taken from him, that the minister dares not ask for more, as it would be equivalent to the confiscation of the land itself.

Mr. Hume has speculated with great ingenuity on the consequence of the national debt arriving at this pitch. He supposes that one of three methods must be resorted to. The first is, that the scheme of some projector should be adopted, which could only tend to increase the confusion and dismay, and the nation would thus 'die of the doctor.' The

next is a national bankruptcy—a plan that he seems to look upon with some approbation. The third, and last, is, that the nation should persevere in paying the full interest. He speculates on such a determination, and compares it in the following manner with his two former suppositions:—'These two events, supposed above, are calamitous, but not the most calamitous. Thousands are thereby sacrificed to the supply of millions. But we are not without danger that the contrary event may take place, and that millions may be sacrificed for ever to the temporary safety of thousands. Our popular government, perhaps, will render it dangerous for any man to venture on so desperate an expedient as that of a voluntary bankruptcy. And though the House of Lords be altogether composed of proprietors of land, and the House of Commons chiefly, and consequently can neither of them be supposed to have great property in the funds; yet the connection of the members may be so great with the proprietors, as to render them more tenacious of public faith than prudence, policy, or even justice, strictly speaking, requires. . . . The balance of power in Europe, our grandfathers, our fathers, and we, have all esteemed too unequal to be preserved without our attention and assistance. But our

children, weary of the struggle, and fettered with encumbrances, may sit down secure, and see their neighbours oppressed and conquered; till at last they themselves and their creditors lie both at the mercy of the conqueror.'* The picture of things at home he draws in the following manner:—'No expedient remains for preventing or suppressing insurrections but mercenary armies: no expedient at all remains for resisting tyranny: elections are swayed by bribery and corruption alone: and the middle power between king and people being totally removed, a grievous despotism will prevail. The landholders, despised for their poverty, and hated for their oppressions, will be utterly unable to make any opposition to it.'†

If we look to foreign nations, we shall see that Venice, after wars of glory, arrived, in the beginning of the last century, at that stage of decay of which Mr. Hume speaks. Her revenue was not sufficient to pay the interest of her debt. She suspended payment, but still was unable to support the expense of her government. It requires, how-

* This course, thus foreseen by Mr. Hume, has been lately recommended as a new and a wise policy; but it is, in fact, the policy of the Tories, in the reign of Queen Anne. (1861.)

† Hume's Essays. Essay on Public Credit.

ever, more space than we have here, to examine the complicated causes of her downfall.

Holland was also borne down in her latter years by the weight of her debt. It is still enormous in proportion to her wealth and population.

France began the Revolution with a debt she could not support. By a summary process, in the middle of the war, she virtually abolished the greater part of it. No country, however, has yet been precisely in the situation of England. Commerce and credit are not confined to a spot, but run through every vein in her body; and, it is to be feared, a national bankruptcy would give a sudden check to industry, the effects of which would not easily be repaired. Very mistaken notions prevail with respect to the good effects which would follow from applying a sponge to the debt. Of these mistakes, none is more mischievous than the notion which many entertain and inculcate, that the labourer who receives 18*s.* a week, of which ten are consumed by the taxes on beer, candles, etc., would, if all these taxes were taken off, receive the same 18*s.*, and obtain more than twice as much for them. The real price of labour, it must be recollected, is regulated by the supply and demand. The money-price, of course, will vary with the money-price

of the provisions, house-rent, clothes, candles, etc., which are required for the maintenance of the labourer. If the demand for labour remains the same, and by a reduction of taxes the articles which the labourer uses are reduced in price from 18*s.* to 8*s.*, his wages will fall from 18*s.* to 8*s.* But it will be said that the farmer and manufacturer, having more capital to lay out on labour, the reduction of taxes will bring an increased demand. This, indeed, may ultimately be the case; but it is not likely that such effect would follow a sudden stoppage of the payment of the dividends. So many consumers are spread over this country, who derive their income, either directly or indirectly, from the funds, that the first effect of a national bankruptcy would be a great diminution of demand, and a general depreciation of agricultural and manufactured produce throughout the country.

CHAPTER XXX.

THAT A FREE GOVERNMENT REQUIRES PERPETUAL JEALOUSY, AND FREQUENT RENOVATION.

'Le gouvernement d'Angleterre est plus sage parce qu'il y a un corps qui l'examine continuellement, et qui s'examine continuellement lui-même : et telles sont ses erreurs, qu'elles ne sont jamais longues, et que par l'esprit d'attention qu'elles donnent à la nation, elles sont souvent utiles.'—*Montesquieu, Grandeur et Décadence des Romains*, chap. viii.

ALL experience of human nature teaches us the fact, that men who possess a superiority, real or imaginary, over their fellow-creatures, will abuse the advantages they enjoy. A man cannot drive a one-horse chaise without looking down upon those who walk on foot; much less can a mortal be entrusted with the uncontrolled guidance of an empire, and not be guilty of insolence or oppression towards those who are styled his subjects.

The History we have been reviewing is pregnant

with examples of the encroachments of power, and the decline of virtue in those who are appointed to govern. The House of Tudor enlarged their prerogative beyond the boundaries of all former times; the House of Stuart improved upon those bad precedents, and claimed, *de jure*, that despotic authority which the Tudors had exercised *de facto*. When this sin was washed away in the blood of the royal martyr, Cromwell, who had been appointed to command the forces of a free Commonwealth against an ambitious Sovereign, made use of the influence he had obtained to set up his own authority still higher than that of England's hereditary kings. When Charles II. was restored to the throne of his father, by the indulgence of a forgiving nation, he imposed upon her a yoke at once more galling and more degrading than that of any former monarch. William III. passed his life in continual struggles with his subjects to obtain new prerogatives or prevent fresh restrictions on the royal power. When, by the accession of the House of Hanover, the Whigs at length became completely triumphant, they also fell off from virtue, and the martyrs and patriots of the seventeenth century were succeeded in the eighteenth by a race of pettifoggers and peculators. Nothing

can show more clearly the necessity of perpetual jealousy than the corruption of the Whig party: inheriting all the great principles of liberty, and forming the only free government of any importance in Europe, power proved to them a Capua, and success induced them to forget the means and neglect the qualities by which they had obtained it.

It is true, that the continual agitation of public questions in England has in it something very alarming to persons at a distance. I remember when the question of the Liberty of the Press was discussed in the Spanish Cortes of 1811, an orator, who spoke against a free press, held out the fate of England as a warning, and asked the assembly if they wished to see as many factions, and as many tumults, as prevailed in Great Britain. But these things are more dreadful in appearance than in reality. Tavern-speeches, contested elections, field-meetings, and tumultuary processions, often seem to portend the instant destruction of the order of society; but the sound and the smoke are greater than the mischief, and the people, accustomed to the noise, pursue their occupations with as much composure as the crew of a frigate manœuvre the vessel amid the roar of the wind. The evils of despotism, though less striking, occa-

sion far more suffering: the one is like an eruption of the skin, of little importance, though visible to every eye; the other is a mortal, deep-seated disease, which unseen attacks the noblest and most vital parts of the frame.

These observations apply, in my opinion, to the agitated question of Parliamentary Reform. It appears to many, even in England, that the discussion of this subject is fraught with the mightiest dangers, and cannot terminate but in the convulsion of society. It appears to me, on the contrary, that these discussions arising out of the state of the people, and carried on with the whole nation for an audience, so far from being mischievous, tend to excite that spirit of inquiry and investigation which is necessary to the freedom of the State.

Whether Reform is carried or not, it cannot but be of the utmost service to direct the attention of the people to the conduct of the House of Commons, and to oblige them to become, either by their constitution or by the fear of shame, the vigilant guardians of the public interests. The discussion of the question of Reform will beneficially serve to prevent that stagnation of the public mind, and that blind confidence in the depositories of power, which are fatal to a free state.

One melancholy reflection seems to result from what has been said. Liberty, which requires perpetual agitation, perpetual jealousy, and perpetual change, must be exposed to more hazards, and therefore be less durable in its nature than despotism, which to subsist requires only to be unaltered. A despotism, indeed, which is founded upon ignorance, and which carefully excludes the external light, may, if not invaded from without, be the most permanent of all governments; for the debasement of the people, which is one of its means of immediate government, is likewise a security against any future change. It would seem, indeed, that freedom, like all the best and finest productions of this world, is one of the most frail and transitory. But let not despotism boast her advantage: half a century of freedom within the circuit of a few miles of rock, brings to perfection more of the greatest qualities of our nature, displays more fully the capacity of man, exhibits more examples of heroism and magnanimity, and emits more of the divine light of poetry and philosophy, than thousands of years, and millions of people collected in the greatest empire of the world can ever accomplish in the darkness of despotism.

CHAPTER XXXI.

CONSTITUTION OF THE HOUSE OF COMMONS.

'It is true that what is settled by custom, though it be not good, at least it is fit. And those things which have gone long together are, as it were, confederate within themselves. Whereas new things piece not so well; but though they help by their utility, yet they trouble by their unconformity. All this is true if time stood still; which contrariwise moveth so round, that a froward retention of custom is as turbulent a thing as an innovation; and they that reverence too much old times are but a scorn to the new. It were good, therefore, that men in their innovations would follow the example of time itself, which, indeed, innovateth greatly, but quietly.'—*Lord Bacon.*

We have hitherto said scarcely anything of the constitution of the House of Commons. From the time of Edward I. it has been composed of knights who represented the freeholders or landed property of counties, and of citizens and burgesses, who represented the commercial interests of cities and boroughs. What these boroughs so distinguished were, is a question lost in remote antiquity. It appears clear, however, that the writ sent to the

sheriff merely directed him to send to Parliament burgesses for the boroughs within his county, and that the sheriff issued his precept to such of the places called boroughs as he thought fit. Whether they were so called from charter or prescription is uncertain. This service being attended by wages to the members, was considered as a burden; and several boroughs petitioned and obtained leave to be relieved from it, some on account of their bearing other burdens. During the contest of the Houses of York and Lancaster, however, the House of Commons having become of more importance, and having not unfrequently a voice in the disposal of the crown, the privilege of electing members to have a seat in it grew into a desirable privilege. The charter of Wenlock, granted by Edward IV., which is said to be the first in which the privilege of sending members to Parliament is expressly mentioned, grants that privilege as a matter of favour, and as a reward of services performed by the proprietor of the borough. A little before this, the right of voting at county elections was restrained to 40*s.* freeholders, on account, it is said, of the tumults and affrays which were likely to occur at those elections—a proof they were already objects of interest. The kings of the House of Tudor, it will be

recollected, although they raised themselves above the people, acted not without, but through the Parliament. The House of Commons began to debate according to present forms under the sovereigns of this family. During the reign of Elizabeth, it happened, for the first time, that a member was found guilty of bribing the returning officer. In the reign of James, Agmondesham, after four hundred years' discontinuance, was restored to the privilege of sending members. Wendover and Marlow were restored at the same time. Amongst the arguments in favour of their right, we find the following, in an abstract of the case drawn in 21 Jac. 1.*—'Thirdly, the use in these ancient times being, that the burgesses, attending in Parliament, were maintained at the charge of the boroughs; when the boroughs grew poor, the boroughs only for that reason neglected to send their burgesses to the Parliament; therefore, now seeing they were contented to undergo that burthen, or to choose such burgesses as should bear their own charges, there was no reason to deny that petition. Lastly, it was urged in behalf of the burgesses, that the liberty of sending burgesses to Parliament is a liberty of that nature and quality, that it cannot be lost by neglect of any

* Browne Willis, Notitia Parliamentaria, vol. i. p. 120.

borough; for every burgess so sent is a member of the great council of the kingdom, maintained at the charge of the borough; and if such a neglect may be permitted in one borough, so may it be in more, and consequently in all the boroughs in England; and then it might follow that, for want of burgesses, there would be no Parliament.'

In consequence of this decision, there was returned, for Wendover, Mr. John Hampden, 'who beareth the charge.' In this and the succeeding reign, the following boroughs were restored by Parliament:—

Ilchester	18 Jac. 1.
Agmondesham	21 Jac. 1.
Wendover	Ditto.
Great Marlow	Ditto.
Cockermouth	16 Car. 1.
Okehampton	Ditto.
Honiton	Ditto.
Ashburton	Ditto.
Milbourn Port	Ditto.
Malton	Ditto.
Northallerton	Ditto.
Seaford	Ditto.

Twenty-four were restored by the Sovereign himself. These must have been all willing to bear the

charge, for fifty-one boroughs that had sent members have never been restored at all. From the reign of Henry VIII. to the accession of Charles I., the House of Commons received an addition of 156 members. In Cornwall alone, Edward VI. added 12 members, Mary, 4, and Elizabeth, 10.

Cornwall, it appears, was chosen as the best place to fix these members, because the Crown, in right of the duchy, had great influence there, by means both of mines and lands. These additions clearly show the desire of the Crown to obtain dependants within the House of Commons. Such unhealthy excrescences, however, did not prevent the Petition of Right, or guard the throne from the Roundheads.

At a time when projects were teeming on all subjects, for the amendment of the whole body of the law, of the Church, of the State, and even of the calendar, it was not to be expected that the House of Commons should be without its reformer. It was natural to expect that a plan should be recommended for making representation equal and uniform. Accordingly, a proposal of this nature came from the masters of all reforms of that day—the army. The plan was adopted in its chief principles by Cromwell in the two Parliaments he called after becoming Protector; but neither the temper of the

times, nor the genius of the man, permitted the experiment to be made in such a manner as to give it the slightest value. From the first of these two Parliaments Cromwell experienced a decided opposition to his authority; and it was dissolved because it presumed to discuss the question whether the government should be in a single person. In the second, after various means used to influence the electors, no person was allowed to enter without a certificate from the Council of State, and thus 100 members were excluded. Richard Cromwell, either discouraged by these essays, or yielding to the growing partiality for old forms and methods, assembled a Parliament in the ancient manner. Lord Shaftesbury, however, who was the first after the Restoration to violate the independence of Parliament, by insisting that all returns should be judged of in Chancery, was also the first to renew and keep alive the doctrine of parliamentary reform. In a paper published after his death, he complains not only of the undue length of Parliaments, and the corrupt practices of boroughs, but insists on the great speculative grievance that Cornwall sent more members than Wales. Some of his friends, and especially Mr. Samuel Johnson, chaplain to Lord Russell, endeavoured to move the question at the Revolu-

tion, but both the great parties studiously avoided the discussion. From that time to Lord Chatham, the principle of reform, though favoured by some illustrious men, chiefly Tories, seems to have slept in peace; at the same time, however, the grievance greatly increased. Boroughs became more and more venal; and the number of placemen in a house of 556 members is said to have been not less than 200. But the people take little or no interest in the question of reform, or indeed in any question purely constitutional, except when they are suffering real evils from misgovernment. It should be mentioned, however, that in 1745 a Tory motion for annual Parliaments, intended probably to shake the Hanover succession, was rejected by a majority of only 32.

Lord Chatham, finding from experience how difficult it was to rouse the House of Commons to a due sense of ministerial abuses, proposed, as a measure of expediency, that a hundred members for counties should be added to the representative body. This plan was obviously founded on utility only: in the phrase of its illustrious author, it was a plan 'to infuse new life into the Constitution.'

The American war having placed the misrule of our statesmen in a still more glaring light, Mr. Pitt,

in 1781, in 1782, and in 1785, made motions in the House of Commons itself in favour of different plans of reform: all, however, professing to amend only a part of the representation, and resting, like those of his father, on the basis of utility and experience. There were, however, other doctrines afloat. Dr. Jebb, and, after him, Mr. Cartwright, broached the theory of personal representation; which, following out the principles of Mr. Locke, pretended to establish, as a natural and indefeasible right, that every man ought to have a suffrage. Neither this theory, however, nor the plan of Mr. Pitt, which was supported by Horne Tooke and all the temperate reformers of that day, met with any success. Mr. Pitt became at first cold, and then totally silent on the subject.

The question slept till the French Revolution, which disturbed everything, woke it anew. A society, consisting of many of the ablest men of that day, drew up the paper called the Petition of the Friends of the People. This was no less than a bill of indictment against the governing assembly of Great Britain. The history and the state of the boroughs is minutely detailed; and an elaborate attempt is made to show that a few individuals have the command of the House of Commons, and

of course it follows, of the persons and purses of every man in Britain. There is one part of this statement, however, which is manifestly irrelevant to the subject. A large number of county members and others are enumerated as elected by the influence of peers or certain wealthy commoners. It is alleged, that not only do 84 persons nominate directly 157 members, but that 70 others, by indirect influence, in counties and large towns, return 150 more; and thus a pretended proof is given, that a few persons elect a majority of the House of Commons. Now every one who knows England, knows that the freeholders of the same political opinions in a county, whether magistrates or shopkeepers, generally agree to give their votes to the same candidate. The qualities which they seek for in a candidate, it is also known, are, generally, not eloquence, or even abilities, but sense, integrity, and property. Property itself is supposed, in some manner, to be a guarantee of character. It therefore happens, that the person among them who has most land, if he has other common requisites, is the member; and if that person happens to be a Peer, then his brother or his son. Thus it is not the tenants only of a man of property, but his party in conjunction with his

tenants, who make him knight of the shire. A complaint, therefore, that the eldest son of a certain Peer is always returned member for a county in which he has a large estate, instead of the wisest weaver or most patriotic spinner in the county, is not a grievance fit to be stated to the House of Commons, although it might make part of an essay on the character of the English people, or of a general treatise on human nature.

Laying this objection aside, however, the main scope of the petition admits of this answer:—'You complain of the formation of the House of Commons, such as it has existed from the Revolution to the present time. You prove that the frame of our government during that time has been a corrupt combination for private purposes. Now our fathers and our grandfathers have told us, that during that time they were very free and very happy. Their testimony is confirmed by the wisest lawyers, the greatest philosophers, the most enthusiastic poets of the times. Your theory goes to overthrow the testimony of Blackstone, Montesquieu, Thomson, Cowper, and a hundred others, who have declared England to be in their time in the enjoyment of complete freedom. Now government is a matter of experience, and not of specula-

tion; we will, therefore, rest contented with things as they are.'

Such an objection as this appears to me to be sound. For the complaint is made, not of a single or particular grievance, but of the majority of the governing body of the State, such, or nearly such, as they had existed for a hundred years of liberty and glory. To explain this further: if a petition were presented, complaining of the bankrupt laws, it clearly would not be a good objection to say, 'Our ancestors have been free and happy with the bankrupt laws, therefore we will not change them.' But if a petition were presented, stating that the division of our government into three powers was a most absurd one; that it was ridiculous to give one man as much power as 658 representatives of the whole people; that it was out of all reason to admit into the House of Lords a spendthrift or an idiot, because his father had been a statesman or a favourite; that the veto of the king was a barbarous invention unworthy of a polished nation; we should answer, 'The theory may be bad, but the practice has been excellent.'

Mr. Fox, fully sensible of the weight of this answer, came forward in 1797, and put the question upon totally different grounds. He declared the

situation of the country to be so perilous as almost to make him despair of the safety of the State. He argued, that the conduct of the ministers had been such as to bring the commonwealth to utter ruin; and no expedient remained, but to recur to first principles, and reconstitute the State. Admitting the evil to have been fully as great as Mr. Fox represented it, his reasoning was far from proving the propriety of the remedy. For that evil certainly did not arise from disregarding the voice of the people in the American and French wars. 'Liberty is in danger of becoming unpopular to Englishmen,' says Mr. Burke, in the American war. 'In short,' says Mr. Fox, during the French war, 'liberty is not popular. The country is divided (very unequally, I admit) betwixt the majority, who are subdued by fears or corrupted by hopes; and the minority, who are waiting sulkily for opportunities of violent remedies.'* What a strange remedy, then, to make the Legislature more democratic!

But when we are examining the principles of the English government, it is necessary to endea-

* Letter to Lord Holland. *Vide* article Fox, in the new edition of the Encyclopædia Britannica. See, also, Mr. Fox's Speeches at the beginning of the war, which are full of avowals that he had become unpopular by his opposition to it.

vour, as far as we are able, to lay down some general rules for the formation of the assembly of the Commons of a limited monarchy. A few may suffice, both for the author and the reader.

First, All parts of the country, and all classes of the people, ought to have a share in elections. If this is not the case, the excluded part or class of the nation will become of no importance in the eyes of the rest; its favour will never be courted in the country, and its interests will never be vigilantly guarded in the Legislature. Consequently, in proportion to the general freedom of the community will be the discontent excited in the deprived class, by the sentence of nullity and inactivity pronounced upon them. Every system of uniform suffrage, except universal, contains this dark blot. And universal suffrage, in pretending to avoid it, gives the whole power to the highest and the lowest, to money and to multitude, and thus disfranchises the middle class, the most disinterested, the most independent, and the most unprejudiced of all. It is not necessary, however, although every class ought to have an influence in elections, that every member of every class should have a vote. A butcher at Hackney, who gives his vote perhaps once in twelve years at an election

for the county of Middlesex, has scarcely any advantage over another butcher at the same place, who has no vote at all. And even if he had, the interest of the State in these matters is the chief thing to be consulted; and that is as well served by the suffrage of some of each class, as by that of all of each class.

It is an argument too against making the right of suffrage too common, that the privilege of giving a vote gains a value, from not being too generally possessed, or too frequently exercised: were it used every year, by everybody, it would be as little regarded as the golden pebbles were by the children of El Dorado.

Secondly, Enlightened men of every class should be capable of being elected. The highest in rank, excepting the Peers, should be admitted, because they give to a popular assembly new importance, and receive from it additional stability. Above all, their presence and concurrence unite the aristocracy and the people in a common sympathy, planing away the pride of the one, and the envy of the other. Persons without rank or high birth, who have risen by commerce, ought, most undoubtedly, to be capable of admission, both to give an encouragement to the honest exertions of all sorts of

men, and to make every class feel intimately persuaded that they are represented in fact as well as in name. These two sorts of persons require only the legal permission to enter the Legislature: they are sure to find themselves there. But there is another class who ought to form a part of any good representative body, whose election is not so sure,—I mean those who are distinguished by their learning or their talents, but not by their fortune or their commerce with the world; men who have devoted their youth to the acquirement of the knowledge of English law, laws of nations, history of the constitution, political economy; but who are excluded by their want of pecuniary means, their temper, or their habits, from popular contests. For it is not to be denied that a body of 10,000 farmers or tradesmen will choose no man who is not known to them, either by his station in the country, or by a course of popular harangues. If, then, you make none but elections by large bodies, you either shut out the aristocracy of talent from your assembly, and constitute them into a body hostile to your institutions, or else you oblige them to become demagogues by profession: things both of them very pernicious, and very dangerous to the State. It is useful, therefore, to have some elections by per-

sons who, from their station in society, are acquainted with the characters of the men of talent of the day. This may be done either by forming some elective bodies of a few persons, with a high qualification, or by giving to property a commanding influence in the return of a proportion of members.

Thirdly, The grand principle of all, derived from the two foregoing, is, that the representative body should be the image of the represented: not that it should represent property only, or multitude only, or farmers, or merchants, or manufacturers only; not that it should govern with the pride of an insulated aristocracy, or be carried to and fro by the breath of transient popularity; but that it should unite somewhat of all these things, and blend these various colours into one agreeable picture. The House of Commons should be, as Mr. Pitt said, an assembly united with the people by the closest sympathies. Nor is it meant by this expression to say, that it should be for ever following the uppermost passion of the people. The decisions of the House of Commons should be such as either to satisfy the people at the moment, or capable of satisfying them upon plain reasons, when the arguments and the facts are laid before them. If the decisions of the representative body are not fit to

do this, not only are they a bad House of Commons, but they would form a bad senate, or a bad privy council. Let us now see whether the English House of Commons is formed upon principles similar to those I have mentioned.

1st. The general scheme of the representation is evidently calculated to give the right of voting to persons of all classes. Landed property is represented in counties; commercial in cities; and the boroughs contain every possible mode of suffrage, the most limited and the most universal. These, too, are all so blended together; the towns have so much influence in county elections, and landed proprietors so much influence in the neighbouring city or town, that one kind of members does not feel much jealousy of another kind. It is always a great misfortune when they are pitted against each other.

But although no class is excluded from our constituent body, there are parts of the country very inadequately represented. The county of Lancaster, and the county of York, comprising Manchester, Bolton, Leeds, Sheffield, Halifax, and Huddersfield, and containing 2,500,000 of inhabitants, are represented by four persons. This is evidently a practical grievance, and as such it has been felt.

2nd. Enlightened men of every class find their way into the English House of Commons. Those who have property in land are candidates for their respective counties; those who have made their fortune by commerce or manufactures, may easily establish an interest in cities with which they have some connection, or in towns (there are many such) where, without bribery, the inhabitants require a man of fortune to support their public institutions, and give them his custom in laying out his income. There remains the aristocracy of talent, who arrive at the House of Commons by means of the close boroughs, where they are nominated by Peers or Commoners who have the property of these boroughs in their hands. In this manner the greater part of our distinguished statesmen have entered Parliament; and some of them, perhaps, would never have found admittance by any other way. The use of such members to the House itself, and to the country, is incalculable. Their knowledge and talents give a weight to the deliberations, and inspire a respect for Parliamentary discussion, which in these times it is difficult for any assembly to obtain. The speeches, too, of able and eloquent men produce an effect on the country, which is reflected back again on the Parliament; and thus the speech

of one member for a close borough is often of more benefit to the cause of truth and justice than the votes of twenty silent senators.

Some danger as well as much anxiety, it may be thought, arises from the power of nomination to a seat in a representative body. Theoretically, it would be better if the members sent by single persons were elected by a body of rich constituents. But in practice it is not found, that the borough proprietors combine together to sell their influence: on the contrary, they are firm to their several party-connections, and oftentimes they preserve to the House a great orator, whom the clamour of the day or a fortuitous circumstance has thrown out. Such was, on one occasion, the case with Mr. Fox.

3rd. Do the Commons of England represent the people? Perfectly well when the people and the government agree; but when they separate, the decisions of the House of Commons lean more to the side of the government than of the people. This may be proved by examining the history of the two last years of the American war. The majorities on these occasions were small, and they consisted chiefly of borough members. The same thing has happened since the last peace of Paris, on divisions relating to the scale of expenditure and

patronage which the ministers have kept up. The country has been decidedly one way; and the House of Commons, by small majorities, has determined in the opposite direction. The proof of this is made by analysing the divisions, and seeing how the county members have voted. Thus, on Mr. Dunning's motion in 1780, ministers out of 215 members counted only 11 county members, whilst their opponents out of 233 had 69. The desertion of 20 members was then sufficient to turn the scale. On the Walcheren expedition, the English county members against ministers were nearly as three to two, but the majority of the whole House was in favour of the administration. In 1817, on the question of appointing a finance committee with less than five placemen upon it, the county members divided 27 to 15 for the Opposition; the House at large 178 to 136 for ministers. On a motion for reducing two Lords of the Admiralty, the county members were 35 to 16; the House 208 to 152 the other way. It thus appears that during two periods of crisis, the county members, who, as we have seen, are men of property, inclined to the Crown always from station, and generally by party, have been in minorities upon the popular side. It is sufficiently clear, therefore, that other

parts of the House of Commons are far indeed from representing the people. The boroughs especially are liable to this censure. The boroughs generally give a large majority to ministers; but the smaller boroughs give five and six to one, and the Cornish boroughs sixteen or seventeen to one in their favour. There is one kind of boroughs which has not hitherto been mentioned, and which is a chief cause of this disorder. It is a species of borough of which the seat is sold by the electors to the highest bidder. Many of those who represent this kind of borough come in with what are called not political but commercial views. These views are to advance their interests as much as possible at the Treasury, and vote on all questions and at all seasons with the Treasury. Many boroughs also have what is called a patron; sometimes an attorney, sometimes a baronet, and sometimes a peer, who sells them in the market, and takes fifty per cent. for his trouble.

These boroughs, it is true, also return men belonging to the commercial interest, who always ought to find seats in Parliament. But they send them to the House of Commons, not as representatives of the commercial body, but as representatives of that firm in the city to which they belong.

Hence contracts, and licenses, and jobs, of every kind and description. Hence an enormous army and overgrown civil establishments have been sanctioned by the House of Commons in spite of a great majority of those members, without distinction of party, who have large bodies of constituents.

We have now arrived at the conclusion, that the House of Commons does not adequately represent the people, and that the small boroughs prevent that vigilant stewardship of the public revenue which is the bounden duty and peculiar function of that assembly. It follows, as an immediate consequence, that the small boroughs have betrayed the trust which is reposed in them for the good of the community; and that they may without injsutice be deprived of the valuable privilege they continue to possess. But we then come to another question. It is not certain, because we have a right to do this, that it would be wise to do it, or, indeed, that the remedy may not be worse than the disease. In order to enable us to take a clearer view of this part of the subject, let us first take a view of the most approved specifics of the day.

The first of these is universal suffrage. Some persons maintain, that every man has a right to a personal vote, which he has received from God,

and which cannot be separated from him. If this were true, it would put an end to all question immediately. But in fact it is absurd. The right which a man possesses with respect to voting is an artificial right, and must be that which the laws allow him. It would be more rational to say, 'Every man has right to a share in the government of his country: let not the people trust their interests any longer to other hands, but meet and conduct them for themselves on Salisbury Plain. The right is equally good; and Tacitus would have furnished better precedents for this practice than the reigns of our Edwards do for personal suffrage. But further;—there are two things, and not one only, to be proved: 1st, that there exists such a right; 2nd, that it is wise to exercise it. Every member of the House of Commons has a right to freedom of speech; but, happily, many allow it to be dormant; and a multitude of hearers submit to an oligarchy of speakers.

The advocate of universal suffrage next maintains, that the right is one acknowledged and exercised in ancient times of our history; but this is a pure vision. The members for cities and boroughs were chosen by persons who held the elective right by charter or prescription. The knights or mem-

bers for counties were chosen by the freeholders, *i. e.* persons who were free, and possessed land. Of universal suffrage, therefore, not a vestige is to be found, except in one or two boroughs, where this right of voting was established by prescription or charter.

Leaving all right aside, then, let us consider the expediency of universal suffrage. On this I shall not dwell long. It is manifest that universal suffrage is calculated to produce and nourish violent opinions and servile dependence; to give in times of quiet a great preponderance to wealth, and in times of disturbance, additional power to ambitious demagogues. It is the grave of all temperate liberty, and the parent of tyranny and licence. This is not a dream, but the recorded result of the experiment in France; and every Frenchman who loves liberty speaks with horror of universal suffrage. In America, the same bad effects have not followed from this system; but it has produced a monopoly extremely prejudicial to freedom, by throwing the actual elections into the hands of a very few persons, who have assumed to themselves the power of governing for the whole. Hence the real power of choosing the member resides with a small number of leaders of one party or the other.

We come next to consider the effects of a plan to divide the country into districts, and extend the right of suffrage to all persons paying direct taxes. If this plan were accompanied by a triennial bill, it would certainly render the House of Commons an assembly very obedient to the popular voice; but there is some danger that many of the advantages of representation would be lost. The very scope and object of representation is to obtain a select body, who may not only have a sympathy with the people, but who may, by the habits of business which their number permits, and the judgment which their election implies, manage the interests of the country somewhat better than each town and county could do by petition and public meeting. If you render the House of Commons a mere echo of the popular cry, you lose, on many questions, all the benefit of having a body in some degree capable of directing public opinion. I am aware that this argument may be easily pushed too far. I can only repeat, to explain my meaning, that the House of Commons ought to make such decisions as are either agreeable to the people at the time, or when they are not so, the weight of argument should be so great as to convince the country, within a short time afterwards, that the resolution or vote was

adopted, not from any corrupt or sinister motive, but from an enlarged and sagacious view of the public interest.

Many arguments might be used to show that a House of Commons elected by one class only would not form a body so well fitted to represent the people as one chosen by many different classes. These are speculations, however, of some uncertainty. In my mind, the greatest objection of all to the adoption of any broad general plan of reform is the danger it would bring with it to every other institution. The real evil of our present government is the enormous amount of the national debt. Were we to make any complete and total change in any one branch of our legislature, the people would soon inquire whether that change had lightened the burden of the debt. It would be no satisfaction to them to be told that by reductions in the army, and other establishments, savings to the amount of three or four millions had been made. After requiring and obtaining a complete revolution in the form of the House of Commons, the seat of government, they would expect much greater alleviation than any economy could grant. New and more violent changes would be demanded. Law and prescription would be less regarded in

every fresh change. For my own part, I cannot understand how an Englishman can have read the histories of Athens, of Sparta, of Venice, of France, of Spain—how he can have looked for an hour into the history of the world,—how he can have thrown a single glance at the governments existing in the world at the end of the eighteenth century —how he can have weighed the miserable result of the most benevolent plans, and the most brilliant schemes of government, and not cling the closer to his native home. Corrupt as the administration of English affairs may be, it is impossible not to see that the laws afford a greater protection to civil, personal, and political liberty in England, than the general average of governments attain.

'The blessings of the constitution under which we live' is not, after all, an unmeaning phrase. They are acknowledged by foreigners, and by the greater portion of the people of this country. The true coin of our freedom may be clipt and worn, but still it is better than any paper security that may be offered to us. We speak, we write, we think, we act, without fear of a Bastille or an Inquisition. We wear liberty about us still; and the dregs of the spirit of old times, with decayed institutions, are of sounder and better flavour than a

new constitution, however admirable, which requires new maxims of conduct, and would produce new feelings of right and justice.

There is still a third principle, or basis, upon which measures of reform may be founded.

We have seen that, towards the end of the American, and after the conclusion of the French war, the decisions of the House of Commons were contrary to the well-known sense of the people. But the majorities were small, and perhaps an instance will hardly be found of a majority of more than one hundred, on a question on which the country itself was not extremely divided. Now, as it is a maxim of Newton and succeeding philosophers not to admit more causes than are sufficient to explain the phenomena; so also it ought to be the maxim of a statesman not to propose more innovations than are sufficient to cure the evil.

It would lead us too far, if we were to enter here into the discussion of the means by which this great object could best be accomplished. Besides, I have elsewhere fully explained my opinion on this subject.*

I shall only state, in conclusion, that upon the whole, the authority of our greatest statesmen seems

* In the House of Commons itself.

to lean to a partial, and not a general reform. Mr. Pitt's first proposition was to add 100 members to counties; he next moved for a committee; and the last time he brought forward the subject, in conjunction with Mr. Wyvill and the great body of reformers, he proposed to buy the franchises of 36 boroughs, and of some close corporations, who should be willing to part with them. But he never proposed to pull down the house in order to build it up again from top to bottom after a modern plan. Mr. Fox, during the war of the French revolution, went much further. But his sober opinions, as well as those of a person illustrious by his own character, as well as by his friendship for Mr. Fox, may, I think, be collected from the speech of Lord Grey, on bringing forward a motion for a committee on the state of the nation, in 1810.*

* In the original edition, several passages of Lord Grey's speech of 1810 were here quoted. I have transferred some of those passages to the Introduction of the present edition. I have only further to say that, after coming into office in 1830, I took bolder views on the subject of Parliamentary Reform, and felt less fear of the consequences than I had done when this work was written.

CHAPTER XXXII.

STANDING ARMY.

'Nothing ought to be more guarded against in a free state than making the military power, when such a one is necessary to be kept on foot, a body too distinct from the people.'—*Blackstone*, b. 1, c. 13.

In every free state, a Standing Army has been an object of attention and suspicion, and various methods have been resorted to, to prevent the dangers which might be expected to liberty from so formidable an instrument of power. In a view of the constitution of England, the subject of the standing army certainly ought not to be omitted.

In ancient times, the king had a right to call for the attendance of his military subjects in any war in which the kingdom might be engaged, but the term of service was never more than a summer, and the feudal troops ranged under the banners of their lords, retained their special allegiance, and added nothing to the civil authority of the king.

Henry VII. is said to have been the first of our sovereigns who maintained a body guard for his own person. Henry VIII., and after him Queen Elizabeth, began the practice of sending lord lieutenants into the counties with authority to command and array a part of the population for the defence of the county.

From this institution arose the well-known pretension of Charles I. to the command of the militia; a pretension which, however countenanced by the practice of his immediate predecessors, had no authority in law. At the accession of Charles II., however, the question was decided by Parliament in favour of the crown; and a statute was passed, enacting that the command of the militia, as well as of all other forces raised, or to be raised, in the kingdom, should reside in the king. Charles was extremely jealous of this part of his prerogative; and on one occasion, when a militia bill was passed by the House of Commons, he said he would not let the militia out of his hands, no, not for one hour. He made use of the power granted him by Parliament to raise a standing army, varying in numbers, according to the circumstances of peace or war, and supported in times of peace by the subsidies of Louis XIV. He is said to be the

first king of England who ever went to open his Parliament under the protection of the sword. James II. increased the standing army to 30,000 men, and endeavoured to make them the instruments of his designs by a strong infusion of Roman Catholic officers; but the English soldiers disappointed his expectations, and, by their shouts at the acquittal of the bishops, convinced the tyrant that his trouble had been thrown away. At the Revolution, it was provided by law that no standing army should be maintained in these kingdoms, unless by authority of Parliament. Since that time, an act has passed every year, enabling the king to punish mutiny, desertion, and other military offences; the number of men to be maintained during the year being always inserted in the body of the act. Thus we are secured at least against the renewal of an attempt similar to that made by Charles and James to keep up a military force, in defiance of the authority of Parliament, and by means proceeding from other sources. There is not much gained, however, by this provision; the cost of maintaining an army is so great, that it could scarcely be defrayed otherwise than by parliamentary funds.

During the reign of William, extreme jealousy

of a standing army was shown by the House of Commons. After the peace of Ryswick, they obliged the king to dismiss his Dutch guards, though William sent down a message to the House of Commons, written with his own hand, imploring in very intelligible terms that he might be allowed to retain his favourite veterans. But the Commons were inexorable. At the same time, they voted that the whole standing army should be disbanded; though, upon consideration of the necessity of guards and garrisons, they in the following year agreed to vote 7,000 men for the defence of England, and 12,000 for Ireland. Let it be remarked, that, at this time, Louis XIV. was on the throne of France, supporting the title of the exiled king of England, and reviewing in his camp at Compiègne an army of 80,000 men, part of 450,000 whom he maintained during war. Some among us will perhaps be surprised at the boldness of the English House of Commons, both in thwarting their own, and in defying a foreign sovereign; yet we shall not perceive that they had any reason to repent of their rashness; for, during the succeeding war, the conqueror of Blenheim and Ramilies renewed for England the military glories of Crecy and Agincourt.

At the accession of the House of Hanover, the standing army appears to have been greatly increased. Fifteen, sixteen, and seventeen thousand men were usually voted by the Parliament of England, and a separate establishment maintained in Ireland. This number seems to have been the average of the greater part of the last century. In our own days, the number has been still farther increased: an augmentation on which I shall say a few words presently.

A standing army being thus, as it were, engrafted upon the constitution of England, it remains to be seen what are its effects upon the government, and whether any real danger is to be apprehended from it. From the Revolution to the present day, there have never been wanting a certain number of persons, whether moved by patriotism or by faction, who have warned the country of the evils to be apprehended from a military establishment, and pointed out the subversion of the freedom of Rome and other popular states by a standing army, as an example for us to avoid. I am inclined to doubt, however, whether the parallel be a just one. Republics have been destroyed by standing armies, because armies have assisted their chiefs in establishing a

perpetual dictatorship, and in overthrowing the senates and the laws in behalf of a military despotism: but in England, neither experience nor the present state of the country can excite any reasonable dread of the usurpation of a successful general. The monarchical form of our government seems to be a preventive of this evil. Neither is it much to be apprehended that the king himself will make use of the standing army to cashier the Parliament, and subvert the constitution by force. Opinion is too much settled, and the institutions of the country are too vigorous, to admit of so desperate a project: the army itself likewise is too deeply connected with the other classes of the country, to concur in a scheme for putting down the established authorities of the realm. It is true, indeed, that the virtue of the army is, as Lord Chatham said, our chief protection against this danger; but seeing how the army is constructed, it is sufficient.

The open subversion of our liberties by the force of the standing army is then not impossible certainly, but extremely improbable in the present state of the country. Yet we are not to conclude that because there is little danger of the army destroying our freedom, like the troops of

Marius or Cæsar, or of its becoming the servile instrument of a king in a design of making himself absolute, that therefore a large standing army may not be a reasonable object of alarm to all lovers of the constitution. When the peace establishment of 1816 was proposed, Lord Grenville spoke of it in the following strong terms: 'For my own part, I pledge myself to your lordships, and to the country, that never, either in this House or elsewhere, will I fail to give the most strenuous opposition in the power of so humble an individual as myself to any attempts to entail such a monstrous burden on the nation, and to lay the foundation *of such ruin to the constitution*, as must follow from the maintenance in time of peace of an immense military establishment. I could not help last year expressing my dread, that some such proposition was likely to be brought forward. My apprehensions were then considered as visionary; but I fairly confess, that the utmost stretch of my imagination never came nearly to the amount of expenditure which was spoken of out of doors as likely to be proposed. I never did, for a moment, conceive, and I can hardly yet believe, that it is intended to keep up in time of peace, and in this year of peace, an army of 150,000 men. And if

anything could add to the astonishment and horror which I felt when I heard of such a proposition, it was this: that an army of 50,000 men was to be kept up in the United Kingdom. When that shall be proposed, I trust that time and opportunity will be afforded to discuss the proposition. I trust that it is not in the course of one night, or of one debate, that your lordships are to be persuaded so far to abandon the maxims and policy of your ancestors, as to cast away the hope of the blessings of peace and freedom. For my own part, feeling as I do every year still less and less desire to share in the debates and labours of that House; yet, if such a measure as this were really to be brought forward, there is no exertion of which I am capable that should be spared to prevent so great a misfortune. And should such a measure be acceded to, if any reflection could then soothe the declining years of my life, it would be this: that no poor effort which could be made by so humble an individual as myself had been wanting to avert from my country such a calamity.'* The military establishment, of which Lord Grenville here speaks, had been already proposed by ministers in the House of Commons: it consisted

* Parliamentary Debates, vol. xxxii., p. 513.

of 25,000 men for England, 25,000 for Ireland, 46,000 for the colonies, 3,000 for reliefs, 30,000 for France, and upwards of 20,000 for India. Lord Grenville strictly kept his pledge; he opposed the establishment on every opportunity; and on one of the last days he spoke upon the subject, when it was argued that no saving would be made by reduction, he said, 'that if they saved nothing else, they would, at least, save the constitution.'

Now these expressions are not the declamation of a schoolboy eager to display his oratory; nor are they the absurd ravings of a demagogue; nor are they the overflowings of an ambitious spirit, embittered by a long life of fruitless opposition: they are the deliberate opinions of a statesman who, in early life, was the colleague of Mr. Pitt; who was at one time Speaker of the House of Commons; whose knowledge of the constitution was never questioned; who was never accused of courting popular applause; and who, the very year before, had supported the same ministers in their war against Napoleon Bonaparte. Such opinions, from such an authority, may well make us enquire what is the real danger to be apprehended to freedom from a large standing army. A very short examination will, I am convinced, bring every

rational man to this conclusion; that the real danger to be feared is, that the whole government, consisting of its three branches of King, Lords, and Commons, may be made to rest upon military force. Every government, and every part of government, it is well known, is liable to abuse; the English constitution, however, provides this remedy for abuses—that the whole machine of the state is ventilated and visited by the air and light of popular opinion. The administration, however corrupt it may have become, is obliged to purify itself, in order to conciliate that public favour by which alone it stands. The House of Commons, however ill-constituted, must yet yield occasionally to national opinion; and either make itself a just representation of the people, or act as if it were so. But if the corrupt administrators have an army to support them, the necessity for reform vanishes, abuses are perpetuated, and the reign of freedom is closed for ever.

It is in this point of view that the increase of a standing army is really dangerous, and the encouragement of military habits most pernicious. And the reptile is the more to be guarded against, as it would approach without the rattle which gives warning of its vicinity, and serves as a preservative

against its poison. A standing army which destroyed the freedom of England, would not march by beat of drum to Westminster and dismiss the House of Commons; it would not proscribe the House of Peers, and deluge the streets of London with the blood of her magistrates. It would appear in the shape of a guardian of order; it would support the authority of the two Houses of Parliament; it would be hostile to none but mobs and public meetings, and shed no blood but that of labourers and journeymen. It would establish the despotic power, not of a single king or a single general, but of a host of corrupt senators, and half a million of petty tyrants.

Happily, the projects of 1816 were defeated, a third of the army has been disbanded, and we are not yet reduced to this dreadful state of servitude. In England, the army has not yet learnt to assume a tone of superiority over their fellow-subjects, or to trample with impunity on the rights of the people. We do not yet see officers in their uniforms pretend to a higher place in society than the members of civil professions. On the contrary, when not on duty they hasten to rid themselves of the marks of their military service, and to mix with the mass of the community. We do not yet see, as

in France, a soldier employed to apprehend every delinquent, and accountable only to a court-martial if he kills his prisoner instead of securing him. The army in England are still what they ought to be—the defenders, and not the masters of the State.

If we have avoided this danger, however, for the present, it must not be forgotten that we have had but a narrow escape, and that rather owing to fortune than to wisdom. Had the country, indeed, been rich and prosperous after the war, so strongly were the country gentlemen infected with the military mania, that neither the eloquence of some members of Parliament, nor the indefatigable industry of others, would have saved us from an immense military establishment. Our poverty and distress have saved our constitution.

It may not be without its use, before concluding this chapter, to record the grounds on which the peace establishment of 1816 was defended. 'It was rendered necessary,' said the ministers, 'first, on account of the increase of the military establishments of Continental States, and the necessity of preserving our station among the Powers of Europe; and, secondly, because of the increase of population, and the military services required in collecting the revenue and executing the laws.'

These reasons may serve as a guide to teach the people of England for what purposes an army ought not to be kept up. They afford a limit and a rule for the amount of our military force. As long as the numbers of the army can be proved to be indispensable for maintaining garrisons in fortified places, and preserving a nucleus for war, the nation may consider general harangues against a standing army as puerile declamation ; but when they hear it urged, that it is necessary to assimilate our peace establishment to that of the Continental Powers, and that a large army is rendered necessary by the increase of our population, then it is time for them to rouse themselves, and shake off, before it is too late, the burden of a military government.*

* This chapter shows what fears of military rule prevailed after the peace of 1815, even in the minds of such men as Lord Grenville. In 1817, Lord Grey spoke of 'that system of despotism to which we were too rapidly approaching here.' Surely such fears were exaggerated! (1864.)

CHAPTER XXXIII.

OF THE INFLUENCE OF JURIES IN INTERPRETING AND MODIFYING THE LAWS.

> Virtue! without thee
> There is no ruling eye, no nerve in states;
> War has no vigour, and no safety peace;
> Ev'n justice warps to party, laws oppress,
> Wide through the land their weak protection fails,
> First broke the balance, and then scorn'd the sword.
>
> *Thomson.*

THE proposition, that good laws without virtue in the society where they are established are of little or no avail, is one so generally admitted, that it seems useless to waste a word respecting it. Perhaps there is not a more comprehensive or a more humane code of laws, than that which was provided in Spain for the government of the Indians of Mexico and Peru ; but, unfortunately, the legislators were at Madrid, and the people to be protected working for their masters in America, without the power of enforcing their legal rights; so that the code was of no force or value whatsoever. The

converse of the proposition I have selected, however, although perhaps not formally contradicted, is not so generally impressed upon our minds. Men are easily led to believe, that where liberty and wealth have flourished, there must be some very singular excellence, some unfailing virtue, inherent in the laws by which the State has been governed. It would be an easy task to prove, that neither at Athens, nor at Rome, nor at Florence, nor in Holland, has the form of laws reached to any great perfection. This would probably be admitted; and yet many would persevere in thinking that in England our ancestors had discovered some secret for making faultless laws. Blackstone has contributed much to spread this opinion. All that was established had, in his eye, a peculiar sanctity, and he praises the English constitution with the enthusiasm of a scholar who is admitted to view the picture of a great master. The fault, indeed, was on the right side. If he refrained from pointing out many obvious improvements, he also kept alive that respect for our ancient liberties, which unprincipled statesmen find to be the greatest (would it were an efficient!) obstacle to their arbitrary innovations. It is impossible, however, to attempt any general view of the history of our

government, and not to be struck with the modifications and forced interpretations, which have been accepted, in order to make law agree with the security of the State and the safety of the subject.

The first instance I shall mention is the treason law. For three centuries, we have been accustomed to appeal to the act of the 25 Edward III. as the perfection of wisdom and liberty on the subject of treason. Yet what is this law, when we come to examine it? The bold and spirited compact of a turbulent nobility with a feudal king, totally unfitted for a commercial and civilized society. It provides, that the penalties of treason shall apply to those only who conspire against the life of the King, or actually levy war against him.* Such a law as this, it is evident, was well calculated to protect the barons from being arrested for disaffection, and to give them the power of holding their private councils for rebellion undisturbed. In the progress of society, however, it was discovered, that a conspiracy to levy war, far from being an ordinary or light offence, was a crime of the utmost magnitude, dangerous alike to the safety of the King and the tranquillity of the country. What

* Of the other offences made treason by the bill it is not necessary to take notice here.

was to be done? It was obvious, that a conspiracy to levy war was not treason by the act, for no men could have been so absurd as to have specified the actual levying of war as treason, when they had already included a conspiracy to levy war under the head of compassing the King's death. If a conspiracy to levy war amounted to compassing the King's death, *a fortiori*, the actual war must have borne that meaning, and therefore required no mention in the statute. Had they wished to include this offence of conspiracy to levy war in their statute, they would undoubtedly have said, levying war against the King, or conspiring to levy war. Indeed, so certain was the meaning of the law of Edward, that a new law making a conspiracy to levy war amount to high treason was enacted, and afterwards repealed with other new treasons at the beginning of the reign of Mary. In this dilemma, the lawyers cut the Gordian knot. They decided, that 'compassing or imagining the death of the King,' meant conspiring to depose him, or to imprison him, or to use force for the purpose of making him change his counsellors, or his measures; for any of these acts *might* lead to his death.*

* Foster, the great authority on these subjects, says, that conspiring to imprison the King, is compassing his death; because

They interpreted the offence of levying war against the King to mean a riot for any general purpose, as to pull down inclosures, or meeting-houses. These violent constructions of law, first imagined under the reign of the Tudors, put in force to shed the blood of good men under the Stuarts, crept in and flourished till they received the sanction of the upright and venerable Judge Foster in the reign of George I. In those times of mild government, however, the engine was little wanted, and it was reserved for Mr. Pitt to direct it against the lives of his old supporters the reformers, during the French revolutionary war. But juries refused to carry the construction as far as the minister desired. It was proved, indeed, to their satisfaction, that Hardy and others had joined in associations, which had no other object than to overturn the institutions, one and all, by which the throne was surrounded. The Chief Justice declared there could be no doubt respecting the construction of the law. But it was impossible to convict Hardy, without making all political associ-

the graves of princes are near their prisons. To stretch this trite moral observation into a snare for taking away a man's life, under pretence of explaining a law of the fourteenth century, is a refinement as absurd as it is cruel.

ation in opposition to the ministry liable to capital indictment, and the prisoners were therefore acquitted. Less than two years ago, some raving demagogues went beyond anything that appears of Hardy and the constitutional society. They resolved not to obey the laws, and they recommended in their speeches physical force, as the only means of obtaining redress. Many of them were committed for high treason. But the Government, recollecting the lesson their predecessors had received, declined to prosecute for that offence; and have thus tacitly abandoned a pretension dangerous to the safety of every man in the country. At the same time there can be no doubt that if an accused person were proved to have levied troops for the direct purpose of insurrection against the King, a jury would find him guilty of high treason. The law of high treason, insufficient at first for the security of the state, and afterwards a snare for the subject, has thus been worked out at last into a barrier, alike providing for the stability of the offended throne and the safety of the innocent accused.

Let us now pass to the law of libel,—the security by which the liberty of the press is to be protected. Blackstone tells us that libels, in the

sense in which we are speaking, are 'malicious defamations of any person, and especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule.' He tells us that 'the communication of a libel to any one person, is a publication in the eye of the law:' and that 'it is immaterial, with respect to the essence of a libel, whether the matter be true or false!' Thus, then, a man may be punished for any writing on the conduct of a minister which may expose him to public hatred, contempt, and ridicule; although the allegations contained in it be true, and it has only been shown to one person. To make this power more formidable, the judges were wont formerly to maintain that they alone had the power of deciding whether the writing were libel or no; and that the jury were only called upon to decide upon the fact of the publication. Here indeed is a law of tyrants! How has the liberty of the press ever survived it?

The miracle is soon explained.—The prosecutor on the part of the Crown formerly contented himself with putting in the paper and proving the publication, leaving it to the judge to pronounce the writing libellous. The counsel for the

accused always dwelt upon the hardship of convicting any man for the publication of a writing without examining whether that writing were innocent or pernicious. The jury felt the injustice of the proceeding, and generally acquitted the accused. The libel bill of Mr. Fox, then, while it afforded a just protection to the public press, was rendered necessary to the Government itself, by the breach which had taken place between the law and the men bound to administer it. By this bill juries were constituted judges of the law as well as of the fact; that is to say, they were entitled to decide not only whether the writing in question had been published or no, but also whether it were libellous. Thus, in this instance also, the spirit of the people amended a bad law.

I cannot leave this subject of libel without mentioning the hardship to which accused persons are still subjected by being tried by special juries. These juries are, in the country, the nominees of the Crown, and often totally unfitted by their prejudices to do justice in a political cause. Surely in a case where the powers of the government are brought to bear against an individual in so delicate a matter as seditious libel, the subject ought to have a protection somewhat similar to that which

he is allowed in cases of high treason, of challenging peremptorily thirty-five of the jury.

Many other cases might be mentioned, in which the verdicts of juries have operated to check the execution of a cruel or oppressive law, and in the end to repeal or modify the law itself. The direct perjuries of juries on the subject of criminal law have been already mentioned; the verdicts given in cases of bankruptcy would afford many other instances of the same kind. Thus, not only are juries in fact the real judges in England, but they possess a power no judge would venture to exercise, namely, that of refusing to put the law in force. Undoubtedly this is a very dangerous power, more especially as juries, consulting in secret, deciding without reason assigned, and separating without being afterwards responsible, are free from all control but that of their own consciences; yet exercised as it has been with temper and moderation, the discretion of juries has proved extremely salutary. It has been the cause of amending many bad laws which judges would have administered with exact severity, and defended with professional bigotry; and, above all, it has this important and useful consequence, that laws totally repugnant to the feelings of the community

for which they are made, cannot long exist in England.

I have thought it useful to devote this chapter to an effect of the institution of trial by jury, hitherto little remarked; but I am unwilling to conclude it without expressing, in the strongest manner, my own sense of the value of the institution itself. It is to trial by jury, more than even to representation (as it at present exists), that the people owe the share they have in the government of the country; it is to trial by jury also, that the Government mainly owes the attachment of the people to the laws; a consideration that ought to make our legislators very cautious how they tamper with this mode of trial by new, trifling, and vexatious enactments.

CHAPTER XXXIV.

INFLUENCE OF THE CROWN.

'Men are naturally propense to corruption; and if he, whose will and interest it is to corrupt them, be furnished with the means, he will never fail to do it. Power, honours, riches, and the pleasures that attend them, are the baits by which men are drawn to prefer a personal interest before the public good; and the number of those who covet them is so great, that he who abounds in them will be able to gain so many to his service as shall be sufficient to subdue the rest. It is hard to find a tyranny in the world that has not been introduced this way.'—*Algernon Sidney.*

The celebrated resolution of 1780, 'That the influence of the Crown has increased, is increasing, and ought to be diminished,' may seem to carry its own refutation along with it. A House of Commons that can vote a resolution so hostile to the Crown, it may be said, can have little reason to dread its influence. This objection, however, would be more specious than solid. The influence of the Crown acts by slow but continual pressure;

the opinion of the people by sudden impulse. Thus a series of measures injurious to the interests and honour of the country are persisted in for a long time by mere force of authority and the private advantages which individuals acquire by supporting the system. At length the evil is carried beyond bearing: the people see they have been misled and benighted, and determine to dismiss their guides. But even then the holders of power have innumerable means of softening, perhaps of totally averting their disgrace, and they proceed for some time longer conducting the nation through fresh difficulties, and involving the State in new and greater perils. Thus it was in 1780; the party who had carried the abstract resolution before mentioned, found themselves in a minority a few weeks after, when they attempted to deduce from it a practical result.

It is said to have been in the reign of Charles II. that the plan of influencing the members of the House of Commons by gifts and favours of the Crown was first systematically framed. The name of 'Pensioner Parliament,' given to the House which sate in that reign for seventeen years without dissolution, is a sufficient index of the general opinion concerning it. Many of the

poorer members sold their votes for a very small gratuity. Offices and favours were granted to the speakers most worth buying; the rest were glad of a sum of money. The trifling sum of £10,000 was allowed by Lord Clifford for the purpose of buying members. This was increased by Lord Danby. By the report of a Committee of Secrecy, appointed in 1678, it appears that many members received money or favours of one kind or another for their votes.

There can be no doubt that the practice was continued during the reign of William. Sir John Trevor was convicted, when Speaker, of receiving bribes from the city of London, to procure the passing of the Orphans' Bill. Mr. Hungerford was expelled for the same offence.

These facts show how unjust it is to charge Walpole with having been the first who governed England by corruption. That he carried corruption to a great extent can hardly be doubted. He did it with a coarseness which, by destroying the shame attendant upon it, overthrew the low barrier of virtue still subsisting, and extended the vice which thus openly displayed itself. He is said to have affirmed that he did not care who made members of Parliament, so long as he was allowed to deal with them

when they were made. Perhaps these stories were unfounded; but they threw discredit on his government.

At the time of Lord North's administration the influence of the Crown was exerted in the most profuse, most shameful, and most degrading manner. The friends and favourites of the minister were allowed to have a share in the loan, which they sold the moment after at a gain of ten per cent.* Mr. Fox, in his speeches, more than once accuses Lord North of having devoted £900,000 of a loan to conciliate support. It is remarkable that Mr. Fox allows, at the same time, that it is natural that a minister, in making a loan, should favour his own friends, and that it is not to be expected any minister will ever act otherwise. He does not venture to blame Lord North for this practice, but only for the abuse of it. Some members of Parliament actually received at that time a sum of money for their votes. Every office of government was a scene of confusion, waste, and prodigality, admirably adapted for the interests of all who wished to enrich themselves at the expense of honour, patriotism, and conscience. A cry for reform in the expenditure, louder than that which

* Rose's 'Influence of the Crown.'

had overturned Walpole, was raised, and produced the resolution mentioned at the beginning of the chapter. The wish of the nation extended to parliamentary as well as economical reform. Mr. Pitt skilfully made himself the organ of both, and on the strength of his professions obtained that credit from the people which was denied to the party who, after a long and unpopular opposition to the American war, had lost the fruits of their exertions by joining the minister who carried it on.

After the close of the American war, Mr. Burke's Bills, and the regulations of Lord Shelburne, made a diminution of 216 places. Mr. Pitt abolished 200 inferior offices in the salt department, the salaries of which amounted to £25,000 a year.* Besides these, since 1780, thirty-two placemen have been excluded from Parliament by Mr. Burke's Bills, and to these Mr. Rose adds fifteen contractors. Some sinecures, too, have been lately abolished.

On the other hand, the influence of the Crown has been wonderfully increased by the extension of our establishments. But it will perhaps be as well to take a short review of it as it at present exists.

* Rose on the Influence of the Crown. Ed. Review, vol. xvi. p. 191.

The influence of the Crown may be arranged under several heads:—

1. The collection of the revenue.
2. The civil list and the subordinate offices of civil government.
3. The colonies.
4. The army, navy, ordnance, &c.
5. The law.
6. The church.
7. The influence of honours.

To begin with the collection of the revenue. This expense, amounting in 1821 to upwards of four millions sterling, and of which £1,800,000 consists of salaries and superannuations, is one of the most powerful instruments of government. The number of persons employed in the customs alone, in 1821, was 6,864. The salaries, £638,000. In the excise, in 1821, the number of persons employed was 5,625. The salaries, £638,000.* Including England, Scotland, and Ireland, the number of officers employed in the customs only are nearly 9,000. Offices in the post-office, the stamp-office, and the customs especially, are made part of the patronage of members of Parliament voting in favour

* Lord Londonderry's speech on Mr. Brougham's motion, June 25, 1822.

of government. So likewise are the offices of receiver-general in counties, and so likewise are frequently the higher offices of commissioners of excise and customs. But even the patronage of the smaller offices, though the exercise of it may give little satisfaction to the minister or the member of Parliament, who may be sometimes heard to declare that they would gladly be quit of it, is a powerful means of persuasion with that numerous class of men who prefer a favour from government to any other means of earning their bread. Hence this extensive and minute net catches in its meshes a vast number both of the large and the small fish, and especially in little boroughs, where poverty and idleness make men hungry and unscrupulous.

The minister, seeing his advantage, has of late years more completely organised and adapted this kind of patronage to the purpose of parliamentary influence. When an office in the stamp or post office is vacant, the Treasury write to the member for the county or borough voting with government, and ask for his recommendation. Many applications of course are made to him by his constituents, and by him to the First Lord of the Treasury. Let it be observed in candour, however, that it is not to be supposed that gentlemen of independent for-

tune barter their consciences for the miserable consideration of this small patronage. But those who are already favourable to government, are enabled to retain their seats by this method, and the habit of asking for assistance brings them into a closer and less reputable connection with the minister than they would otherwise maintain. To this dangerous practice may be attributed the slippery and deviating conduct of some country gentlemen, whose predecessors in times past were remarkable for stoutness and honest obstinacy.

2. The civil list and the subordinate places of administration.

The sum appropriated to what have been always held to be civil list services, amounts to a million and a half. Besides this, however, other payments are made permanent charges on the consolidated fund, which formerly would have been included under the head of civil list, so as to raise this head of expense to upwards of £2,000,000. But by late arrangements, so much has been separated from the civil list, and forms part of the supplies voted every year, as to reduce the civil list nominally to about £1,100,000.* The civil list, properly so called, is

* All these statements apply to the period 1821—23.

granted to the king for his life at the commencement of his reign. It comprehends the expenses of the royal household and palaces, the salaries of the officers belonging thereto; a pension list, a privy purse at the king's own disposal, consisting of £60,000; a part of the expense of the civil government and judges, and the whole of the foreign ministers and ambassadors. This last charge alone amounts to near £300,000.

We have now ambassadors at Paris, Brussels, Petersburg, and Vienna, at £12,000 a year; a minister at Berlin, at £7,000; in America, at £6,000 and several smaller images of the Sovereign dotted over the small courts of Germany, at £4,000 and £5,000 a year. These are very valuable offices, and give great influence to the minister. But those which are of more immediate use to him are the places connected with the government at home. About eighty* members holding these favours from the Crown, and receiving salaries amounting to £160,000, have seats in the House of Commons, where they are found to be among the most assiduous in their attendance,

* There are, in fact, eighty-seven, but several of these places are nominal, or have been granted for life very long ago.

and the least open to conviction of any members of the House. Indeed, it is considered, that as long as they hold these places they are bound to agree with the minister; and a lord of the bed-chamber was deprived of his place only last year, 1821, for a vote in favour of the repeal of the malt tax, against the desire of the minister. The choice, to be sure, always rests with the holder of the office; and the minister may justly and fairly say, that he will not confer offices in his gift upon men who have no confidence in his measures. But the liberty of quitting a lucrative office, singly and unsupported, is one that is rarely exercised, and conscience is seldom hardhearted enough to ruin a man for her sake. It were therefore to be wished, that as few occasions as possible should be created of reducing men to a choice between their interest and their duty. For this purpose it is desirable, that the holders of offices not immediately connected with the administration, and whose presence is not required in the House of Commons, should be disabled from sitting in Parliament. This is the language of morality, of the constitution, and of the law. Two Acts of Parliament, one of 1705, and another of 1742, exclude persons holding certain offices, therein named, and any new office

created since the act of Anne, or having a pension during pleasure, from sitting in Parliament. In later times, however, when a new office has been created, the provisions of the act of Anne have been at the same time dispensed with. This is the case with the members of the India Board, and the Vice-Treasurer of Ireland.

The pensions granted by the Crown, placed by Parliament on the consolidated fund, amount altogether to about £400,000. A great part of these come under the head of civil list, and have been already mentioned. But this repetition suggests the observation, that every head of expense is so divided and separated into different accounts, that it requires much time and labour to disentangle them. If we wish to know the salary of the judges, we must look in two different places; if we desire to ascertain the sums received by junior members of the royal family, we must look in five or six. There are likewise pensions to the amount of £42,000 per annum, created by an Act of Parliament, for the purpose of rewarding those who have served in 'high and efficient public offices.'

This provision is a substitute for the ancient system of sinecures, which were usually, if not always, granted to old servants of the public, or

their sons. It is certain, that less odium is likely to be excited by the grant of a pension to one whose services are known, than by the holding of an office without duty, by one who is the son of a public servant. On the other hand, the arrangement is far from being an economical one, and whilst it professes to grant a pecuniary reward indiscriminately to all who have held high offices for a certain time, it may very well happen, that many will receive the pension, whose wealth makes it unnecessary; and that the son of a great statesman, born without fortune, and worn out in the service of his country, may be left almost a beggar. There is some injustice in the public mind on these subjects. If ever a man deserved that his son should have the means of accumulating a fortune, it was Lord Camden; yet his services were completely forgotten, when, many years after his death, his son was known to receive the legal salary of a sinecure place. Nor has sufficient justice been done to that noble generosity to his country, with which the present Lord Camden surrendered, a few years ago, the greater part of his emoluments.

3. The Colonies cannot fail to be a fruitful source of influence. They are found in every quarter of

the globe: Malta, the Ionian Islands, the Cape of Good Hope, Ceylon, and several West India islands, have been acquired since 1780. It has been estimated, on good grounds, that 800 new civil and military places have been created in the colonies since that time. But even the Indian empire, though under the government of a trading company, contributes its share of ministerial patronage. The appointments to India were in 1792 about 133; in 1820, 527. A fourteenth of these appointments is directly in the hands of the President of the Board of Control; that is to say, about 38 places yearly, or a general patronage of about 400 offices, great and small.*

4. The Army, Navy, Ordnance, &c.

The patronage attached to a large establishment of military and naval forces must necessarily give a great influence to the Crown. After the peace, there were not less than 600 generals in the English service. In 1780, we had 2,000 military officers; at present we have 19,000 on full and half-pay. In 1780, we had about 1,800 naval officers; at present we have about 8,400 in full and half-pay; thus making about 27,000 officers in army and navy

* Mr. Brougham's speech on the Influence of the Crown, June 25, 1822.

only. The army, in 1821, cost nearly nine millions, the navy about six.

The establishment for the year 1821, exclusive of the civil list and permanent charges on the consolidated fund, may be reckoned at £18,000,000.* Adding to this the collection of the revenue and other disbursements, the government have about £25,000,000 to spend among 20,000,000 of people, which may be compared to an individual having £25,000 a year to spend in a district containing 20,000 inhabitants. The expenditure of a government, however, creates much more influence than that of an individual, as so great a part of it consists in offices and salaries.

5. The Law.—This profession has been justly compared to a lottery with a few great prizes. But as every man who has a ticket in the lottery expects the £20,000 prize, so the great prizes in the law animate every member of the profession to hope and exertion. Passing by the offices of Attorney and Solicitor-General, the former of which is worth at least £10,000 a year; passing by also even the dignity of Chief Justice, the post of Lord Chancellor is well worth a moment's attention. It is the

* Lord Londonderry's speech, as above.

noblest prize that is offered in this country to industry and talent. The Lord Chancellor receives a splendid income of upwards of £20,000 a year; he disposes by his decisions of the property of all the wealthiest families and greatest persons in the kingdom; he presides in the House of Lords over all the hereditary aristocracy of the land; in the closet, he is keeper of the King's conscience, and always one of the most powerful of the confidential advisers of the Sovereign. To attain this eminence, no distinction of birth, no interest of connection, is necessary; no minister's cousin, no great peer's offspring, no 'tenth transmitter of a foolish face,' can fill this laborious and difficult office; it is to be attained by merit and industry, and may be given to a chimney-sweeper's son. Even political knowledge is not requisite, and no other opinions are required than a disposition to conform with the ministerial creed. What a prize for talent! what a temptation for virtue!

6. In the Church there are, in England alone, in the gift of the Crown, 2 archbishoprics, 24 bishoprics, 38 deaneries, 46 prebends, and 1,020 livings. The larger bishoprics give from £15,000 to £20,000 per annum; the bishopric of Durham is a kind of principality, and they all of them have

a patronage of livings, which, in some instances, afford a rich provision for a whole family. The lands belonging to the bishoprics are let on leases for lives, so that when a life falls in, but especially if two lives fall in before the bargain is completed, a large fine accrues to the bishop. In this way, even in some of the inferior bishoprics, a fortune of two or three hundred thousand pounds has been made. At the same time, there are several that are very poor; and the bishopric of Llandaff is said to be under £1,000 a year.

The Church of Ireland is still more richly endowed. There are in Ireland 4 archbishops and 18 bishops, whose united income is estimated at £185,700 a year. The Bishop of Derry has £15,000 a year, the Bishop of Elphin £12,000, the Bishop of Raphoe £10,000, and none are under £4,000 a year. But besides this acknowledged income, the revenue the Irish bishops draw from fines is enormous; their landed property is immense; leases are for twenty-one years, and fines are taken every seven, or even every three years; thus becoming a kind of triennial rents. Mr. Wakefield calculates that the estates of the following sees would, if fairly let, bring the undermentioned sums: The primacy of Armagh,

£140,000 a year; the see of Derry, £120,000; the see of Kilmore, £100,000; the see of Clogher, £100,000; the see of Waterford, £70,000. The patronage is extremely valuable. In the bishopric of Cloyne, one living is worth £3,000 a year, one £2,000, one £1,800, and six from £1,500 to £1,200: the whole of the livings in the gift of the Bishop of Cloyne are valued at £50,000 a year. There are about 1,300 benefices in Ireland, upwards of 200 of which are in the gift of the Crown.

The manner in which the influence of the Crown is exercised in these four great bodies—the army, the navy, the law, and the church—is extremely different. In the army, governed as it is by a Prince of the Royal Family, for the sake of the army itself, and not for the sake of the ministry, political connections make no difference, except in the highest favours, where the minister interferes. An officer who distinguishes himself in action has the same chance of promotion whether his opinions are Whig or Tory. If some are favoured, and others neglected, the difference is not founded upon the parliamentary votes which may be obtained by an unjust partiality; or if it is ever so, the instances at least are extremely rare.

The navy, being under the direction of a cabinet minister, is not so purely conducted. Many an officer owes his advance, many a civil servant his place, to an election interest. Yet there is no bar to merit, and a man of signal talents and courage is almost sure to rise, be his family as obscure or as obnoxious as possible.

The law appointments are necessarily made on a very different principle. The inferior offices, if inferior they can now be called, of Attorney and Solicitor-General, imply a determination to support the measures of government, when called upon, as thoroughly as the interests of any private client whom a lawyer undertakes to defend. The path to the office of judge very frequently, and to the office of Lord Chancellor almost always, passes through these offices. It follows, that the road of ambition for a lawyer is to attach himself to the governing party in the State.

In the Church, the immense and valuable patronage of government is uniformly bestowed on their political adherents. No talents, no learning, no piety, can advance the fortune of a clergyman whose political opinions are adverse to those of the governing party. The utmost that is permitted to a bishop is moderation in his manner of maintaining

the orthodox political faith; any hesitation in his vote is an unpardonable sin. He may be a high Calvinist, or a controversial Arminian; a bigoted enemy of all other religious opinions, or an enlightened friend of toleration; but if he shows himself of a different creed from his patrons in civil concerns, and is guilty of political heresy, his further rise is stopped for ever.

It is curious to remark the differences created by these different modes of conferring patronage on the different tempers of the various professions which have been reviewed.

The army is by its nature a favourer of power in a single hand, and therefore attached to the prerogative more than to the popular part of the Constitution. But the various family connections of the officers, and the accustomed frankness of the profession, lead to differences of opinion uttered without disguise, and generally maintained through life without tergiversation. Only it is to be observed, that whilst a military life seldom, if ever, converts a Tory into a Whig, it not unfrequently imbues a Whig with the despotic notions of a Tory. Upon the whole, it is better to rely on the honourable feelings than on the constitutional opinions of the army; and if an open attack on

liberty is little to be dreaded from them, our security is rather to be attributed to the strength of their private connections than to an enlightened view of their public duty.

The navy, on the other hand, have almost as decided a bias in favour of liberty, as the army have in favour of power. The general feeling that a naval force cannot be employed to suppress freedom, and the praises that have from immemorial time been bestowed upon the navy as the constitutional force, combined, perhaps, with some jealousy of the army, lead them to consider themselves as the natural friends of the liberties of England. Some great examples, indeed, might be quoted of high naval commands obtained by political subserviency; but, generally speaking, the navy of Great Britain are distinguished for liberality of sentiment, and a generous sympathy with the cause of freedom all over the world.

Of the law much has been already said. It is the general tendency of this profession to give men a rooted attachment to the institutions by whose rules all their decisions are made. But their attachment, it must be confessed, is seldom of a very discriminating nature; and if, on the one hand, they kindle with indignation when the

ancient rights of the people are trampled upon; on the other, they fire with almost equal zeal if an attempt is made to moderate the cruel spirit of ancient legislation. Generally speaking, however, the first disposition of a lawyer, it must be confessed, is to enquire boldly and argue sharply upon public abuses. They are not apt to indulge any bigoted reverence for the depositaries of power; and, on the other hand, they value liberty as the guardian of free speech. But the close of a lawyer's life is not always conformable to his outset; many who commence by too warm an admiration for popular privileges, end by too frigid a contempt for all enthusiasm. Commencing with the vanity of popular harangues, they sometimes end by the meanest calculations of avarice. So frequently has such a change happened, though indeed but seldom in proportion to the whole number of lawyers, that the profession has become, we have seen how unjustly, a bye-word with many for apostacy and servility.

The Church has not to reproach itself with the same tergiversation in its members. Connected with power and office by their very profession, all members of the Church have an original tendency, not easily overcome, to take the side of govern-

ment; and those who desire to rise to distinction in the hierarchy, generally make a display of servility as the surest means of elevation; or, if raised by some rare accident from real merit, superadd a varnish of adulation to their other acquirements. Yet it must be said that a cringing Churchman has not that scoffing contempt of virtue, and affected disbelief of all public principle, which distinguish the apostate lawyer. These symptoms arise from galled and irritated conscience, and therefore are not seen in the clergy, who gain from habits and education a genuine and sincere belief in the duty of submission to the powers that be. There are, however, a number of clergymen whose honourable and enlightened opinions make them at once proscribed and respected.

7. The influence of honours.

Among the higher classes of society, no reward operates more effectually than a star, an earldom, or a marquisate. Persons of great wealth are not to be caught by a pecuniary bribe; they are above the temptation of mere money; indeed there are some who, being already in possession of large fortunes, imagine they show a very high spirit when they refuse an office which joins a salary they do not want, to labour they do not like. But

if these persons are offered a ribbon, or a step in the peerage, they no longer feel the same reluctance; on the contrary, they imagine it shows a disinterested spirit to accept, and even solicit a favour which costs the country nothing. Thus many who cannot be caught by the bait of covetousness, are caught by the bait of vanity, and render themselves the obliged servants of a minister for the sake of a nominal honour. Indeed, so effectual is this tie upon a class of men who can be influenced no other way, that it was one of the great means of government employed by Louis XIV. to attach his nobility to his person. To receive, indeed, the star of an order of knighthood, as a recompense for services performed either in the cabinet or the field; to be thus marked out by the sovereign for the respect and admiration of his people is indeed an honour of which an honest man may well be proud; but when these illustrations are given to those who have no claim but that of being born noblemen, they form a distinction without a difference, and merely point out those who wear them as the sworn adherents of the First Lord of the Treasury.

Thus we have knights of the Garter, knights of St. Patrick, knights of the Thistle, many of whom

have performed all their services to their country, by deputy, in supporting the minister in the House of Commons. I will not mention the Order of the Bath, as that is generally given to real merit. A much greater influence, however, is exercised by conferring peerages. In 1780 there were 225 peers; there are now 378. Besides this, the different ranks in the peerage form a magazine of patronage, a step being now given from baron to earl, as commonly as from ensign to lieutenant. In 1780 there was but one marquis, and now there are 18: in 1780 there were 78 earls, now 109.

If we here sum up, in a few words, the influence of the Crown, we shall have to reckon new peerages, and steps in the peerage, bestowed with great profusion; ribbons, blue, red, and green; six archbishoprics, and 42 bishoprics, some of them of £20,000, and many above £8,000 a year in value; military and civil commands in Ireland, India, Ionian Islands, Gibraltar, Jamaica, Barbadoes, Trinidad, Cape of Good Hope, Canada, &c. &c.; embassies to Paris, Vienna, Petersburg, and Brussels of £12,000 a year each; many others of £7,000, £6,000, and £5,000; others of £3,000 and £2,000; regiments in the army; ships in the navy;

offices of all kinds at home and abroad; more than a million of civil list, containing Lord Chamberlains, Lord Stewards, and numerous inferior offices; rich livings falling in every week; valuable appointments to India greatly increased in amount; about two millions for salaries in the offices for collection of the revenue, and two millions more for expenses; retired allowances to a tenth of that sum; clerkships, hospitals, contracts, etc., and an establishment costing, in the whole, £18,000,000 a year.

In spite of all this, there are persons who still maintain that the influence of the Crown is not increased; but one should imagine that such persons purposely shut their eyes before they venture to maintain so extraordinary a paradox. To avoid all debate, however, it may be useful to refer to times somewhat remote, and compare the influence of the Crown in those days to that which exists at the present moment. It were well, indeed, that those who value their liberty would apply this method to several other parts of our government; for power creeps on by degrees, and imperceptibly makes approaches, which, in time, enable the hired troops of despotism to batter the citadel of

the constitution itself. Thus, in the history of Rome, the progress which was made towards decline during the life of one man, might be so gradual as to escape his notice; yet, when the historian comes to review that period, he shall find the tendency to decay so perceptible, that he will not hesitate to mark, as causes pregnant with the ruin of the state, acts and occurrences which the contemporary Roman citizen may have allowed to pass unheeded.

If, applying this rule, we compare the influence of the Crown during the reign of William III. with that which exists at present, how prodigious is the difference! William was forced to dismiss his Dutch guards, and to content himself in times of great peril with maintaining no more than 7,000 troops in England. He was obliged, against his will, to pass the Triennial Bill, and frequently altered his measures in consequence of the expressed sentiments of his Parliament.. In our days, the machine has rolled on so smoothly, that with one or two exceptions the ministry have met with no resistance to their will. Perhaps this is better; I am only saying, it is different from the reign of William III.

In closing this chapter, it ought not to be omitted that when we say the influence of the Crown is increased, it by no means follows that the influence of the King is equally augmented; indeed, it may be directly the reverse. A minister, especially if he has been long in office, may have so engaged and corrupted the great proprietors of boroughs; may have so distributed honours, and ribbons, and offices; may have so obliged the principal members of the House of Commons, by providing for their friends and relations in the customs, the excise, or the colonies; may have so fettered every public man of weight and influence by the ties of private interest, that at last they shall be enabled to say to their Sovereign, 'However pernicious our measures may be, and however unpopular our persons, you must maintain us in power, for we alone can command a majority in the House of Commons.' Such a state of things would prove more than anything the overgrown influence of the Crown, though it would be equally at variance with the just influence of the King, and the true spirit of the Constitution.

Let us conclude this chapter with the hope, that as the influence of the Crown is so greatly and so

dangerously increased, it may be met by a new and determined spirit in the people, neither to be cajoled by specious falsehoods, nor fatigued by repeated evasions.

CHAPTER XXXV.

PUBLIC OPINION.—RESTRICTIVE LAWS.

'Per me ho adottata nell' intero la legge d'Inghilterra, ed a quella mi attengo; nè fo mai nessuno scritto che non potesse liberissimamente e senza biasimo nessuno dell' autore essere stampato nella beata e veramente sola libera Inghilterra. Opinioni, quanti se ne vuole: individui offesi, nessuni: costumi, rispettati sempre. Queste sono state, e saranno sempre le sole mie leggi; nè altre se ne può ragionevolmente amettere, nè rispettare.'

ALFIERI, *Vita*, t. ii. p. 133.

IN reply to all complaints of the overgrown influence of the Crown, it is the fashion to point out the increased and increasing influence of public opinion. There can be no doubt that public opinion acquired prodigious force during the late reign. The publication of the debates in Parliament, and the general diffusion of political knowledge, form a most important innovation. The censor of the Roman republic, however austere in the exercise of his functions, could never equal in minuteness

of enquiry, or severity of rebuke, the unseen and irresponsible public of the British Empire. What statesman can hear with unshaken nerves that voice, which, beginning in the whispers of the metropolis, rises into the loud tone of defiance within the walls of Parliament, and is then prolonged by means of the hundred mouths of the press, till its innumerable echoes rebound from the shores of Cornwall and the mountains of Inverness? What minister, however profligate in his notions, does not, in his parliamentary language, endeavour, in some degree, to conciliate the uncorrupted mind of the multitude?

The effect of this power is, however, very vaguely estimated, when it is said that public opinion overbalances any advantage the Crown may derive from the increase of the standing army, or the extension of its influence. In the first place, this argument proves too much; for if public opinion is a sufficient counterpoise to power, why should we maintain the Habeas Corpus Act, or Magna Charta, or continue the existence of Parliament itself? Nor is the power of opinion, as some suppose, a complete novelty in this country, or an exclusive attribute of a free constitution. It was public opinion which induced the soldiers

on Hounslow Heath to shout when the Bishops were acquitted; it was public opinion which obliged Sir Robert Walpole to relinquish the excise scheme. Even in despotic countries opinion has its weight: it dismissed Squillace from the government of Spain, and put to death the Emperor Paul, the unlimited autocrat of Russia. In Turkey, also, we are told, that when the people are discontented they set fire to a house. It is the custom for the Sultan always to assist at a fire, and thus an opportunity is found of telling him those unpleasant truths which would never otherwise reach his ear. This, to be sure, is a strange method of giving constitutional advice.

The chief advantage, then, of a free government is not the existence of public opinion, but that it is exerted in favour of the wholesome rights and established liberties of the people. Looking at the subject, then, in this point of view, I own I doubt whether public opinion has increased so much in quality, value, and weight, as it has in bulk and velocity. A few observations may assist us in forming a judgment on this question.

Whatever may have been the reasons, good or bad, which induced the government of this country to undertake a war against the insurgent colonies of

America, and whatever may have been the policy, or even the necessity, of entering into a contest with the French republic, it cannot be denied that the object of both these wars was to oppose popular revolution, and that their spirit was contrary to popular principles. It may be said, indeed, that both of these wars were supported by the full concurrence of the people of this country. But this objection takes away nothing from the weight of the observation which I wish to make. It must be recollected, that a high-spirited nation is easily incited to take arms; and whether they do so in a cause congenial or adverse to freedom, depends entirely upon the occasion which presents itself, and the use which is made of it by those whose talents qualify them to direct public opinion. Now the occasions upon which both of the wars before alluded to arose, were the resistance of a people to its government; and the arguments adopted to induce this country to declare war, were chiefly an appeal to its insulted dignity, and to its feelings of loyalty and piety. During a long period of the late reign, comprising more than half of its extended duration, no attempts were wanting to inflame the public mind, daily and hourly, against the rebellious subjects of our own king,

and against a neighbouring nation, which deposed and executed its sovereign. It is impossible but that these invectives must have had their effect, and it can create surprise in no one that a country so excited, so taught, and so inflamed, and that too, during the latter period, by one of the most eloquent writers, and one of the most eloquent speakers, whom England has produced, should become at last extremely alive to every supposed misdemeanor against prerogative, and completely dull and insensible to any violation of constitutional rights. Nor will those escape blame in the page of history, if any such there were, who led the people on by exaggerated representations of facts; who inflamed their imagination by highly-coloured pictures of carnage and of murder, and endeavoured to put a stop to internal bloodshed in one nation, by extending slaughter and desolation to every state in Europe, and every region of the globe. The example of the French Revolution, however, has had an influence still more direct on the progress of our affairs: the French Revolution is ascribed to everything, and everything is ascribed to the French Revolution. If a book is written containing new opinions on subjects of philosophy and literature, we are told to avoid

them, for to Voltaire and Rousseau is to be attributed the French Revolution. If an ignorant cobbler harangues a ragged mob in Smithfield, we are told that the State is in danger, for the fury of a mob was the beginning of the French Revolution. If there is discontent in the manufacturing towns, we are told that the discontent of the manufacturing towns in France was the great cause of the French Revolution. Nay, even if it is proposed to allow a proprietor of land to shoot partridges and hares on his own ground, we are told that this would be to admit the doctrine of natural rights, the source of all the evils of the French Revolution.*

It is in vain that these absurd clamours are repeatedly refuted; it is in vain that it is shown that the French Revolution arose from one simple cause, the discordance of a brave and enlightened people with a corrupt, bigoted, and despotic government; it is in vain that the atrocities of the revolution are shown to have been owing partly to the character of the people, partly to the cruel oppressions of their former rulers, and partly to the alarm excited by foreign interference. It is in vain to observe, that no comparison can be drawn

* See Parliamentary Debates, 1819.

between a country which had no constitution and no freedom, and one which has a constitution and where the whole people are free. The voice of reason is not listened to; the whole precedent is taken in the gross as a receipt in full for every bad law, for every ancient abuse, for maintaining error and applauding incapacity. It is as if a patient were worn out with bad fare and exhausted with debility, and a physician should administer copious bleedings because his next-door neighbour was dying of a pleurisy.

In the next place, it is very evident that esteem for constitutional learning, and respect for ancient forms and usages, are very much diminished. This, no doubt, is owing to the increase of mercantile men, who have not, like our landed gentlemen and magistrates, the habit of looking into law-books, and referring to Acts of Parliament. It is also partly owing to the pressure of great evils, which have sometimes made a necessity, real or supposed, of overlooking rules and maxims, to remedy an urgent danger. Whatever be the causes, however, the consequence is very grievous. The forms of Parliament and of the constitution, as has been before observed, oppose in themselves a great barrier to the strides of arbitrary power. The violation of

those forms ought to serve as a signal that an enemy is in sight, and the people should be prepared at once to take part against a measure appearing under such inauspicious colours. This feeling, however, being now weakened, it is in the power of a minister to dispense with precedent and usage, whenever they stand in the way of convenience and expediency, and thus all the guards and outworks of freedom, on which her security so much depends, are yielded without a blow.

Another loss for the cause of liberty is to be found in the extinction of the race of the Pretender. As long as the Stuarts maintained their claim to the crown, the King was obliged to make up in good government what he wanted in legitimate right. A great part of the Church, and their peculiar adherents, allowed the doctrines of the Whigs to prevail, that they might exclude those of the Pope; they permitted liberty for the sake of religion. But at present, the King's advisers have no fear of a successful rival; and the Church, having been saved by the Whigs, think it consistent with propriety and dignity to calumniate them, and the cause of liberty itself.

There is another circumstance with respect to public opinion, which is of more importance than

any. It is, that opinion has become much more sensitive, and men are more disposed to go to extremes than they ever were before.

It must be owned, certainly, that the severity of popular criticism checks some of those unprincipled bargains and sudden turns which used formerly to prevail among political parties. The extreme jealousy of the public mind with respect to character, however, often tends greatly to the advantage of the Court. Not only are its enemies divided and dispirited by the shackles that are thrown upon them, but ministers and courtiers are at the same time mainly free from this restraint. Those who coalesce with the men in power, those who are converts to the Treasury, find in the rewards of office a solid compensation for any hooting they may undergo. Whilst their adversaries are obliged to suspend their attention to public affairs in order to reconcile some discrepancy which appears between their opinions on reform at an interval of twenty years, they who limit their humble ambition to office change their whole dress, and appear with great self-applause in an entire new suit of principles, opinions, sentiments, and votes. While such profligacy is openly rewarded, all permanent union in opposition to it is branded as want of princi-

ple; and we have seen, in our own day, a party regularly organised for the purpose of preaching against party. Nothing, of course, can be more agreeable to the Court, with whom, indeed, this language originated. If they could once divide their opponents, and bring a third of them to oppose rashly and inopportunely, and another third to oppose weakly and seldom, the Court battle would be half gained. The only solid hope of having any government carried on would then rest on the ministry; and however ingenious the objections that might be made to their measures, no man could safely say that he preferred the public views of opposition to those of the ministry. The tools of administration are, therefore, most ready to join in decrying party. They are still more pleased when the self-styled reformers go a step farther, and reprobate that very party which is opposed to the Court. Thus it is that the ministers of the King, and the would-be preceptors of the multitude, unite in philippics against that party to which the House of Brunswick owes its crown, and the people its Bill of Rights. The rise of this new body in the state is, perhaps, the most fortunate thing for the progress of the Crown which has occurred since the Revolution. For whilst its

members are active in propagating all the old Court echoes of the mischief of party—the corruption of all public men; that Whigs are Tories out of power, and Tories Whigs in power; another ministry would act just like the present; and a hundred more such doctrines—they contain within themselves a principle of destruction, which will prevent their ever becoming really formidable to the government. The creed which inculcates a distrust of all public men, applies as well to their own leaders as to those of other parties. The experience of the last few years has brought this to the test. If the new party complained of the want of public spirit among the Whigs, and if a newer pretended to expose the mock patriotism of the first seceders, there still arose fresh sectaries, who did not fail to declaim against the overbearing and aristocratical insolence of the Reformed Church. At the same time these renowned leaders, whilst they made themselves weaker and weaker by division, displayed everything which was wanton and inflammatory in language, together with all that was feeble and futile in conduct. Provocations to revolution were not insinuated at secret clubs, and taught by degrees to desperate and misguided followers, but openly proclaimed to mixed crowds,

composed of the idle and the curious, as well as of the mischievous and the seditious. Like other novelties, violence of language and avowals of rebellion had at first their attraction; but the people soon began to be tired of hearing the same speeches on the same subjects; and with those who could find work, two or even one shilling's worth of meat and clothes were soon found to outweigh in value the froth and frippery of an ignorant orator. But the blow was struck: the speeches that had been made, the resolutions that had been passed, and the numbers that had been present at the scene, formed intelligence sufficiently alarming to all who suffered themselves to be alarmed; and although the real actors were as nothing when opposed to the King, the House of Lords, the House of Commons, the Army, the Navy, the Clergy, the Bar, the Yeomanry, and the great body of the commerce and trade of the country; yet they were fully sufficient to excite a temporary panic, and to force the concurrence of great majorities in Parliament to measures totally opposite to the genius of the constitution.

Thus, the House of Commons more than once has met perfectly disposed to bear its part in passing any measures of severe coercion which the

ministers of the day thought fit to propose. It was thus that, in 1795 and in 1799, laws were passed to prohibit public meetings without a sufficient authority, and to prevent printing unless under certain regulations. In 1817 these measures were renewed, and in 1819 their severity has been much increased. The measures resorted to on these occasions may be classed under two heads, both of them sanctioning methods, in my mind, injudicious, and one extremely dangerous.

The first is the suspension of the Habeas Corpus Act. Now, this is a very proper precaution when a conspiracy is carried on by a few principal leaders whose imprisonment puts an end to the plot. But it is no remedy at all when the evil consists in the discontent of some thousands of unemployed manufacturers. *Uno avulso non deficit alter*: the subalterns, in conducting these popular humours, are fully as able and audacious as the chiefs. The other remedy consists in new laws, restraining the right of speaking and writing. Acts of this kind interpose obstacles to public meetings and public newspapers, and serve to discountenance, for a time, by the authority of Parliament, the abuses of liberty which have prevailed. But it is manifest that it is impossible to prevent

sedition and blasphemy, unless all freedom of speech and the liberty of the press be extinguished. It is impossible to provide beforehand, by act of Parliament, that all speeches and writings shall keep within the bounds of loyalty and moderation. Therefore the restraining laws are, except for the moment, inefficient. They are also pernicious; for they admit a principle which, if pushed to its full extent, authorises a censorship of the press. They are, therefore, in direct opposition to the maxims of the Revolution, which allowed any man to do freely that which in itself was harmless. Even the Riot Act, which is justly reckoned a law of great severity, imposes no penalty or restraint except upon persons who are in the actual commission of a riot. Those, indeed, who have lived in latter times, have reason to praise the moderation of the government which preserved itself from a Pretender and his party with so little expense to public liberty.

The final result of these new circumstances leads us to a consideration most unfavourable to liberty. It has been observed, that the progress of the influence of the Crown is by slow and gradual advances, and that the resistance opposed by the people acts by sudden and occasional

efforts. Thus we read in history, that after the means of patronage have enabled the ministry to trench one by one upon the best privileges of freedom, a moment of distress produces enquiry, and, by an unexpected blow, the nation wins a triumph which is equivalent to all that has been gained by the Court. But this advantage is at present entirely lost. Our enquiry on the subject of the influence of the Crown leads us to the conclusion that it is increasing rapidly and continually, and that the murmurs which it excites from time to time serve only to produce new restrictions upon liberty. Nor can we expect that popular discontent will assume a milder character. Whilst every opinion may be professed, some will always be found hostile to religion and to monarchy; and whenever the country is visited with distress, those upon whom misfortune falls will for a time give a willing ear to anything which professes to be a plan for their relief.

It would seem, however, on the other hand, that we have now gone as far as it is possible to go safely upon the system of restraint. If blasphemy and sedition again alarm the timid, they must be suppressed by the ordinary laws; otherwise we must either admit a censorship, or surrender the present mode of trial by jury.

It is to be hoped that, rather than adopt either of these tyrannical expedients, England would impeach the minister who should give such atrocious advice to his Sovereign.

It is a consolation, however, to think, that if the people of England are really determined to preserve their liberties, the laws afford means amply sufficient to quell sedition. They only require a firm and even hand to exercise them; new statutes on the subject of the press can only be the resort of statesmen weak enough to feel alarm, or wicked enough to take advantage of it for the destruction of their country's freedom.

CHAPTER XXXVI.

LIBERTY OF THE PRESS.—PROBABLE FATE OF THE ENGLISH CONSTITUTION.

'If it be desired to know the immediate cause of all this free writing and free speaking, there cannot be assigned a truer than your own mild, free, and humane government; it is the liberty, Lords and Commons, which your own valorous and happy councils have purchased us; liberty, which is the nurse of all great wits. We can grow ignorant again, brutish, formal, and slavish, as ye found us; but you then must first become that which ye cannot be, oppressive, arbitrary, and tyrannous as they were from whom ye have freed us. That our hearts are now more capacious, our thoughts now more excited to the search and expectation of greatest and exactest things, is the issue of your own virtue propagated in us. Give me the liberty to know, to utter, and argue freely, according to conscience, above all liberties.'

Milton.

THERE is no enquiry more interesting than the examination into the present state of our laws and manners, with a view to ascertain the probable fate of our Constitution. We have seen, in the two last chapters, that the influence of the Crown has increased to an alarming extent, and that the

recurrence of periods of popular ferment, instead of checking this influence as it was wont to do in old times, is made the occasion of passing new laws, clipping away something every time from the established liberties of the nation. It seems impossible to imagine signs more unfavourable to the maintenance of freedom, or more ominous of that despotism which Mr. Hume has styled the *euthanasia* of our Constitution.

Yet there are circumstances on the other side which, if the nation take advantage of them, seem to promise a continuance of our free Constitution for some time to come.

Among these I reckon the National Debt and the Liberty of the Press; two things, it may be thought, extremely unlike, both in their nature and in their tendency; yet both, in my view, are impediments to the complete establishment of despotism.

The National Debt is the great cause of the taxes which press upon the country. Now there never was a despotic country which bore taxes to an amount anything like that which is now entailed on the people of this country. It is liberty, as Montesquieu has well observed, which reconciles nations to the payment of large imposts.

If, therefore, a despotism were to be established in England, it must begin by destroying the National Debt; but for this reason every one who has an interest in the funds has likewise an interest in opposing the establishment of despotism.

But it may be imagined that the reduction of the taxes would be of itself a measure so popular that the country would consent to part with its liberties on condition of having its burthens taken away at the same time. Besides the great interests, however, opposed to the execution of such a scheme by any King of England, the people generally, I am convinced, prefer the open discussion of public affairs with large taxes, to an absolute monarchy with light taxes.

The second great circumstance is the Liberty of the Press. It seems difficult to conceive a people passing at once from the general diffusion of political knowledge to the utter darkness of despotism, and the prohibition of all discussion which such despotism would require. But the advantages of the liberty of the press, in preserving our Constitution, deserve further consideration.

Some of the observations in the last chapter may seem to lead to a conclusion that the intense light thrown upon all public affairs tends rather

to increase the irritability and diminish the power, than to augment the strength and improve the vision, of our organs of sight. Allowing, however, the abatement which must be made for the evils produced by an overstraining of attention to political matters, we shall yet find enough of good left to make us cherish the liberty of the press, as the guardian and guide of all other liberties.

Before I proceed to give a short view of some of the advantages of the press, let us again recall to our minds that it is nonsense to talk of its liberty without its licentiousness. Every attempt to curb its licentiousness, otherwise than by the application of law, after an offence committed, must likewise restrain its liberty. To do one without the other, were as difficult as to provide that the sun should bring our flowers and fruits to perfection, but never scorch our faces.

Many have a mistaken notion of what the press is. They suppose it to be a regular independent power, like the Crown or the House of Commons. The press does nothing more than afford a means of expressing, in good and able language, the opinions of large classes of society. For if these opinions, however well sustained, are paradoxes

confined to the individual who utters them, they fall as harmless in the middle of sixteen millions of people, as they would do in a private party of three or four. Nor is it the sentiment of A., the editor of one newspaper, or of B., the editor of another, which controls the course of government. These gentlemen are little, if at all, known; with one or two exceptions, their names are never mentioned. It is their skill in embodying in a daily journal the feelings and the reasonings which come home to the business and the bosoms of large portions of their countrymen, that obtains for their writings fame and general acceptance. But it would be vain for these persons, powerful as the daily press is, to endeavour to make the people permanently discontented with laws which they loved, and a minister whom they revered. They would not be dreaded, or even read. Equally vain would it be for a vicious, oppressive, and odious government to suppress the liberty of printing. It was not the press which overturned Charles I., nor could the Inquisition preserve to Ferdinand VII. his despotic power. The dark cabal, the secret conspirator, the sudden tumult, the solitary assassin, may all be found where the liberty of printing has never existed. And were a govern-

ment to suppress it where it does exist, without taking away the matter of sedition, more crime and less security would probably be the result of their foolish panic and powerless precaution.

In looking at the celebrated governments of antiquity, and those of modern times which have not admitted a free press, it must strike every one that they have declined, not from any vice inherent in the institutions by which they were governed, but by the gradual decay of national virtue, and the corruption of the people themselves, as well as of their leaders. In Sparta and in Rome this corruption may, in the beginning, be attributed to an influx of wealth acting upon a nation whose liberties and whose morals were founded upon poverty and the contempt of riches. But the precipitate fall of a State, like that of Rome, into an abyss of profligacy and venality, can only happen when the whole people, stained by political and moral vices, are delivered from a sense of shame by the want of any effectual restraint upon their actions. In both these circumstances, England has the advantage of Rome. Her institutions are not founded on the postulate that her manners must be rude and her legislators poor. Commerce and industry of every kind have been favourites of the law from

the commencement. Nor is it easy to emancipate our rulers or our elective body from the sense of shame. Their actions are not submitted to the opinions of a single city, but scanned publicly by sixteen millions of people—nay, by Europe, by America, by the whole globe. The nation itself is too numerous to be generally seduced by the officers of the Crown. In a village of one hundred householders, two, or perhaps four, may be gained by government influence, but the other ninety-six are free to choose their politics and their newspaper. Nor could any anonymous writer venture to appeal to any but the good principles of our nature. No one has yet seen the newspaper or pamphlet which openly defends the venality of judges, or the infliction of torture, any more than the tragedy which holds up cowardice to our admiration, or endeavours to make envy amiable in our eyes. Even the worst men love virtue in their studies.*

* The only resemblance to this influence of public opinion is to be found in the censorship at Rome. Montesquieu says of it: 'Il faut que je parle d'une magistrature qui contribua beaucoup à maintenir le gouvernement de Rome: ce fut celle des censeurs. Ils corrigeaient les abus que la loi n'avait prévus, ou que le magistrat ordinaire ne pouvait pas punir. Il y a de mauvais exemples qui sont pires que les crimes; et plus d'états

In ordinary times, it is evident the exercise of this censorship must be beneficial to the country. No statesman can hope that his corrupt practices, his jobs, his obliquities, his tergiversations, can escape from a vigilance that never slumbers, and an industry that never wearies. Nor is it an important obstacle to truth, that the daily newspapers are the advocates of party, rather than searchers after truth: they act like lawyers pleading in a great national cause; and the nation, like a jury, after hearing both sides, may decide between them. Neither are the advantages to be derived from publicity merely speculative. We see instances of them every day. One of the most remarkable effects of public opinion that can be quoted is, perhaps, the personal integrity of our statesmen with respect to money. In the time of Charles II., and a long time afterwards, the greatest men in the country were not inaccessible to what, in these days, we should call bribery. In the time of Lord North, many members of Parliament were influenced by money in its most gross and palpable shape. In these days (however the same influ-

ont péri parcequ'on a violé les mœurs que parcequ'on a violé les lois.' But the censors were men; and men at length disregarded them.

ence may prevail in another form) it is impossible not to allow that there is much more personal delicacy, and, I will add, a higher sense of honour, among our statesmen than formerly.

The greatest benefit, however, that we derive from publicity, is, that it corrects and neutralizes the vices of our institutions, even when they are not immediately amended by it. Thus, to come at once to the greatest instance of this: the House of Commons is at present so composed, that were it shut up, and admitted no influence from without, the people would soon find that its spirit was so gone, its organs so decayed, its acts so unpalatable, that they would submit to such a government no longer. But we continually find that the talent of a single member outweighs the sense of the whole House; and a minister, after protecting a favourite abuse, year after year, by confident speeches and overwhelming majorities, silently retreats, and abandons the ground on which he appeared to have taken an impregnable position. The House of Commons themselves, too, cannot fail to be influenced on great questions by the general opinion of the people out of doors. If they could meet and discuss measures of state day after day, make speeches that are to be read in

Caithness and in Cork, expose their whole conduct and arguments to the view of the country, and yet pay no attention to the feelings of that country, they would be more or less than human.

Among other questions, upon which, it appears to me, the House of Commons is disposed to give way, is one on which they must be expected to feel like other individuals and bodies, as it intimately concerns their own power. I mean the question of privilege. On the one hand, it cannot well be denied that the House of Commons, like other courts, must have the power of protecting their own proceedings from interruption; and that it would not be consistent, either with the dignity of the assembly, or the safety of the State, to allow other courts to define in what that interruption consists, or to reverse the orders which the House have thought it necessary to make, to secure the freedom of their own deliberations. This concession made, it cannot be denied, on the other hand, that what is called privilege of Parliament has been at various times grossly abused. In 1621, one Floyd, a Roman Catholic member, having used some expressions offensive to the daughter of James I. and her husband, was sentenced by the House of Commons to be pilloried

twice, to ride on horseback through the streets with the tail of the horse in his hand, and to be fined £1,000. In 1759, a poacher, who had trespassed on the fishery of Admiral Griffiths, a member, was voted guilty of a breach of privilege, and reprimanded on his knees. These are clearly acts of tyranny and caprice. Indeed, every commitment by the House of Commons for a libel on the House, not directly tending to interrupt their proceedings, may be considered an abuse of privilege. The proper remedy for such an offence is to pray the Crown to order the Attorney-General to prosecute the offender in a court of law. For the people of England are naturally jealous when they perceive accusers becoming judges, and awarding punishment, without a trial, for a crime committed against themselves.

Another much greater subject is under the influence of public opinion; I mean, the constitution of Parliament itself. The abuses which prevail in the House of Commons, great and glaring as they are, subsist only by permission of the people. If they persevere in requiring boldly, and decidedly, an amendment of those abuses, I feel convinced they will be amended. Where public discussion prevails, it is impossible the truth should not at

last prevail; and persons of property, however ill-inclined to reform, would prefer reform to general and permanent discontent among the people.

I have here spoken only of the House of Commons; but all other courts, powers, and pre-eminences, are subject to the same control, and are saved from the decay to which they are naturally subject, by the same antiseptic virtue. It is true, as we have observed in a former chapter, that in times of great ferment the preserving force is not in operation; but if the constitution is not wholly overthrown in the struggle, the nation in a short time reviews its acts, and often contracts a species of religious horror of the violence which has been done to its most sacred rights. Hence a greater love than ever for the laws which appeared most in danger of being swept away, and a new jealousy of the ancient privileges of the land. Besides, as I have before said, it is impossible to go further without submitting the press to a censorship, and such a proposal would, I am convinced, make the whole country go into opposition.

Upon the whole, to sum up the circumstances which favour and those which oppose the establishment of arbitrary power in England, we have, on the one hand, the immense patronage in the hands

of the Crown, the corruption of the boroughs, the horror caused by the French Revolution, the growing disposition of men to cling to ease and quiet as a security for property, the want of respect for old forms, the custom lately and perniciously begun of recurring to new remedies and new restraints on the appearance of popular excesses, and the increase of the numbers of the people causing dissensions to kindle more quickly, and appear more formidable than formerly. We must add to all this, that a late minister has greatly abused all those means of government which our Whig ancestors were the first to use, thereby making the usual machinery of the State odious to the people, and of dangerous employment to all future rulers. Mr. Pitt, entrusted at an early age with the care of the government, made the country live too fast. Prodigality and profusion everywhere prevailed; the nation borrowed year after year, with increased and thoughtless extravagance; new and artificial facilities were invented to enable us to run in debt; the peerage was depreciated by creations which, at the same time, enfeebled the gentry of the kingdom; a factitious vigour was produced by the application, from time to time, of the most hurtful stimulants, and a temporary repose was obtained at the expense of

permanent strength and the stamina of life itself. Hence a frame, which was formed to endure longer than the ordinary period, may be cut off by a premature failure of its powers. Nations which have been our inferiors or our rivals are watching us with envious pleasure, in the hope of seeing us starved into inanition, or perish in convulsions.

On the other hand, we have the general diffusion of the light of knowledge, the long-settled habit of liberty, and the security of funded property depending upon that liberty. We have a people of virtuous habits, a high standard of morality, and more of the improvements and embellishments of life combined with energy and purity than perhaps ever existed together. We have a political constitution which favours, instead of repressing, wealth, commerce, learning, and the fine arts; we have the whole civilized world as the audience before whom our statesmen must defend their conduct.

These considerations seem to point out a way of safety through all our dangers. We have seen that when our people strongly and manfully express their opinion, their voice prevails. If, then, they resist with energy the slow creeping abuses and the violent sudden innovations that weaken and deface the edifice of our freedom, it may still be

preserved entire. But in order to this, our gentlemen, superior to childish fears, must risk somewhat of their comfort to maintain their liberty. They must submit to hear noisy orators without shrinking; they must cut away with a steady hand the disease which menaces the nobler parts of our political frame. In plain words, they must consent to reform what is barbarous, what is servile, what is corrupt in our institutions. They must make our government harmonize one part with another, and adapt itself to the state of knowledge in the nation. I would fain hope that it will be so: I trust that the people of this great community, supported by their gentry, will afford a spectacle worthy of the admiration of the world. I hope that the gentry will act honestly by their country, and that the country will not part with the blessings which it obtained by all the miseries which a nation can encounter,—by suffering persecutions, by confronting tyranny, by encountering civil war, by submitting to martyrdom, by contending in open war against Powers that were the terror of the rest of Europe. I would fain believe that all ranks and classes of this country have still impressed upon their minds the sentiment of her immortal Milton —'Let not England forget her precedence of teaching nations how to live.'

APPENDIX.

APPENDIX.

(A.)

PAGE xviii.

Circular to the Austrian, Prussian, and Russian Ministers, at Foreign Courts.—Laybach, May 21, 1821.

(Extract.)

'Les changements utiles ou nécessaires dans la législation et dans l'administration des États, ne doivent émaner que de la volonté libre, de l'impulsion réfléchie et éclairée de ceux que Dieu a rendus responsables du pouvoir. Tout ce qui sort de cette ligne conduit nécessairement au désordre, aux bouleversements, à des maux bien plus insupportables que ceux que l'on prétend guérir.

'Pénétrés de cette vérité éternelle, les souverains n'ont pas hésité à la proclamer avec franchise et vigueur; ils ont déclaré qu'en respectant les droits et l'indépendance du pouvoir légitime, ils regardaient comme légalement nulle et désavouée par les principes qui constituent le Droit Public de l'Europe, toute prétendue réforme opérée par la révolte et la force ouverte. Ils ont agi, en conséquence de cette déclaration, dans les événements de Naples, dans ceux du Piémont, dans ceux même qui, sous des circonstances

très-différentes, mais par des combinaisons également criminelles, viennent de livrer la partie orientale de l'Europe à des convulsions incalculables.'

(B.)

PAGE xix.

A petition presented in February, 1824, signed by all, or nearly all, the principal silk manufacturers of the City of London, may, in these days, excite some surprise. It was directed chiefly against Mr. Huskisson's proposed reduction of the prohibitory duty on manufactured silks to thirty per cent. *ad valorem.* The petitioners stated 'that they have learnt with the utmost surprise that it has been proposed to adopt so important a measure as that of a reduction from 5*s.* 6*d.* to 6*d.* per pound upon Italian and China raw silk; from 4*s.* to 3*d.* per lb. on Bengal raw silk; and from 14*s.* 8*d.* to 9*s.* 6*d.* per lb. upon Italian thrown silk; and the admission of foreign manufactured silk goods to importation in this country without any previous communication with the important branches of the trade, all of which are thrown into the greatest consternation and alarm by the contemplated measure,' etc.—*Hansard's Debates,* new series, vol. x. p. 371.

On the 24th of February, 1826, commenced the decisive debate and division which gave the victory to the cause of

free trade. It was in this debate that Mr. Canning said—'But it is singular to remark how ready some people are to admire in a great man the exception, rather than the rule of his conduct; such perverse worship is like the idolatry of barbarous nations, who can see the noon-day splendour of the sun without emotion, but who when he is in eclipse come forward with hymns and cymbals to adore him. . . . Treading with unequal pace in his footsteps, I do not think it our duty to select by preference those foot-marks, in which, from the slipperiness of the times, he may have trodden away.'—*Hansard's Debates*, vol. xiv. p. 856.

The numbers on a division were—

For a Committee to inquire . . .	40
Against	222
Majority . . .	182

(C.)

PAGE xxii.

The following extracts from Mr. Mill's work will show that I have not done him injustice. I quote from the Essay on Representative Government.

[Page 172.] 'When two persons who have a joint interest in any business, differ in opinion, does justice require that both opinions should be held of exactly equal value? If with equal virtue, one is superior to the other in knowledge and intelligence—or if with equal intelligence, one

excels the other in virtue—the opinion, the judgment of the higher moral or intellectual being, is worth more than that of the inferior; and if the institutions of the country virtually assert that they are of the same value, they assert a thing which is not. One of the two, as the wiser or better man, has a claim to superior weight: the difficulty is in ascertaining which of the two it is; a thing impossible as between individuals, but, taking men in bodies and in numbers, it can be done with a certain approach to accuracy.

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[Page 173.] 'Now, national affairs are exactly such a joint concern, with the difference, that no one need ever be called upon for a complete sacrifice of his own opinion. It can always be taken into the calculation, and counted at a certain figure, a higher figure being assigned to the suffrages of those whose opinion is entitled to greater weight. There is not, in this arrangement, anything necessarily invidious to those to whom it assigns the lower degrees of influence. Entire exclusion from a voice in the common concerns is one thing: the concession to others of a more potential voice, on the ground of greater capacity for the management of the joint interests, is another. The two things are not merely different, they are incommensurable. Every one has a right to feel insulted by being made a nobody, and stamped as of no account at all. No one but a fool, and only a fool of a peculiar description, feels offended by the acknowledgment that there are others whose opinion, and even whose wish, is entitled to a greater amount of consideration than his. To have no voice in what are partly his own concerns, is a thing which nobody will-

ingly consents to; but when what is partly his concern is also partly another's, and he feels the other to understand the subject better than himself, that the other's opinion should be counted for more than his own, accords with his expectations, and with the course of things which in all other affairs of life he is accustomed to acquiesce in. It is only necessary that this superior influence should be assigned on grounds which he can comprehend, and of which he is able to perceive the justice.

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[Page 174.] 'The democracy, at least of this country, are not at present jealous of personal superiority; but they are naturally, and most justly so, of that which is grounded on mere pecuniary circumstances. The only thing which can justify reckoning one person's opinion as equivalent to more than one, is individual mental superiority: and what is wanted is some approximate means of ascertaining that. If there existed such a thing as a really national education, or a trustworthy system of general examination, education might be tested directly. In the absence of these, the nature of a person's occupation is some test. An employer of labour is on the average more intelligent than a labourer; for he must labour with his head, and not solely with his hands. A foreman is generally more intelligent than an ordinary labourer, and a labourer in the skilled trades than in the unskilled. A banker, merchant, or manufacturer, is likely to be more intelligent than a tradesman, because he has larger and more complicated interests to manage.

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[Page 176.] 'The "local" or "middle-class" examina-

tions for the degree of associate, so laudably and public-spiritedly established by the University of Oxford, and any similar ones which may be instituted by other competent bodies (provided they are fairly open to all comers), afford a ground on which plurality of votes might with great advantage be accorded to those who have passed the test. All these suggestions are open to much discussion in the detail, and to objections which it is of no use to anticipate. The time is not come for giving to such plans a practical shape; nor should I wish to be bound by the particular proposals which I have made. But it is to me evident, that in this direction lies the true ideal of representative government; and that to work towards it, by the best practical contrivances which can be found, is the path of real political improvement.

. . . . . .

[Page 177.] 'Let me add, that I consider it an absolutely necessary part of the plurality scheme, that it be open to the poorest individual in the community to claim its privileges, if he can prove that, in spite of all difficulties and obstacles, he is, in point of intelligence, entitled to them. There ought to be voluntary examinations, at which any person whatever might present himself, might prove that he came up to the standard of knowledge and ability laid down as sufficient, and be admitted, in consequence, to the plurality of votes. A privilege which is not refused to any one who can show that he has realized the conditions on which in theory and principle it is dependent, would not necessarily be repugnant to any one's sentiment of justice; but it would certainly be so, if, while conferred on general presumptions not always infallible, it were

denied to direct proof.'—*John Stuart Mill: Representative Government.*

(D.)

PAGE lii.

In the year 1832, capital punishment was abolished for cattle stealing, horse stealing, sheep stealing, larceny to the value of £5 in a dwelling-house, coining, and forgery (except of wills and powers-of-attorney to transfer Stock); and the effect is apparent in the decrease in the number of capital sentences from 1449 in 1832, to 931 in 1833. It was further abolished—in 1833, for housebreaking; in 1834, for returning from transportation; and in 1835 for sacrilege, and letter stealing by servants of the Post Office; and in consequence a further great decrease is shown in the numbers sentenced to death in 1834-35-36 and 37.

By the Acts passed in 1837 (1st Vict.), the offences subject to capital punishment were virtually reduced to the following:—murder, and attempts to murder; rape and carnally abusing girls under ten years of age; unnatural offences; burglary with violence to persons; robbery attended with cutting or wounding; arson of dwelling-houses, endangering the lives of persons being therein. It remained also for treason; piracy where murder was attempted; showing false signals to cause shipwreck; setting fire to Her Majesty's ships of war; riot and feloniously destroying buildings; and embezzlement by servants

of the Bank of England. But these latter offences are of rare occurrence.

Following the passing of these Acts, the number of capital sentences fell to 116 in 1838, and to 56 in 1839. In 1841 (4 and 5 Vict.) it was further abolished for rape, etc., embezzlement, etc., and riot, etc. The average number of capital sentences for the following years, from 1840 up to 1861 inclusive, amounts only to 59·5.

Under the Acts passed in 1861 for the Consolidation of the Criminal Statutes, murder and treason alone remain subject to capital sentence; and the capital convictions in each of the years 1862 and 1863 have been 29 (one in 1862 having been for an attempt to murder, committed before the Acts of 1861 came into operation).

HOME OFFICE,
22nd November, 1864.

STATEMENT of the Number of Persons Sentenced to Death for Murder; of the Total Number Sentenced to Death; of the Number Executed for Murder; and of the Total Number Executed in each year since 1823 inclusive; with the Average of the Numbers for each period of ten years, 1823–32, 1833–42, 1843–52, 1853–62, and the Numbers for 1863, with the proportion of the Average Numbers to the Population for each period of ten years.

YEAR.	SENTENCED TO DEATH.		EXECUTED.	
	For Murder.	Total Number.	For Murder.	Total Number.
1823 . . .	12	968	10	54
1824 . . .	17	1,066	15	49
1825 . . .	12	1,036	10	50
1826 . . .	13	1,203	10	57
1827 . . .	12	1,526	11	70
1828 . . .	20	1,165	18	59
1829 . . .	13	1,384	13	74
1830 . . .	16	1,397	14	46
1831 . . .	14	1,601	12	52
1832 . . .	20	1,449	15	54
Average of the ten years	14·9	1,279·5	12·8	56·5
Proportion of the average to Population	one in 863,234	one in 10,123	one in 996,039	one in 229,177
1833 . . .	9	931	6	33
1834 . . .	13	480	12	34
1835 . . .	24	523	21	34
1836 . . .	20	494	8	17
1837 . . .	11	438	8	8
1838 . . .	25	116	5	6
1839 . . .	12	56	10	11
1840 . . .	18	77	9	9
1841 . . .	20	80	9	10
1842 . . .	16	57	9	9
Average of the ten years	16·8	325·2	9·7	17·1
Proportion of the average to Population	one in 887,230	one in 45,834	one in 1,536,646	one in 813,185

STATEMENT OF PERSONS SENTENCED TO DEATH, ETC.—*continued.*

YEAR.	SENTENCED TO DEATH.		EXECUTED.	
	For Murder.	Total Number.	For Murder.	Total Number.
1843 . . .	22	97	13	13
1844 . . .	21	57	16	16
1845 . . .	19	49	12	12
1846 . . .	13	56	6	6
1847 . . .	19	51	8	8
1848 . . .	23	60	12	12
1849 . . .	19	66	15	15
1850 . . .	11	49	6	6
1851 . . .	16	70	9	10
1852 . . .	16	61	9	9
Average of the ten years	17·9	61·6	10·6	10·7
Proportion of the average to Population	one in 945,300	one in 274,692	one in 1,596,309	one in 1,581,390
1853 . . .	17	55	8	8
1854 . . .	11	49	5	5
1855 . . .	11	50	7	7
1856 . . .	31	69	16	16
1857 . . .	20	54	13	13
1858 . . .	16	53	11	11
1859 . . .	18	52	9	9
1860 . . .	16	48	12	12
1861 . . .	26	50	14	15
1862 . . .	28	29	15	15
Average of the ten years	19·4	50·9	11·	11·1
Proportion of the average to Population	one in 979,222	one in 373,220	one in 1,726,992	one in 1,711,434
1863 . . .	29	29	22	22

N.B.—The Proportion to Population is calculated on the mean numbers of two Censuses for each period, 1821 and 1831, 1831 and 1841, 1841 and 1851, 1851 and 1861.

In 1855, one; in 1856, four; in 1858, three; and in each of the years, 1860, 1862, and 1863, one of the numbers convicted of murder were foreigners.

STATEMENT of the Number of Persons Sentenced to Death for Murder; of the Total Number Sentenced to Death; of the Number Executed for Murder; of the Total Number Executed in each year since 1823, inclusive; with the Average of the Numbers for each period of ten years, 1823–32, 1833–42, 1843–52, 1853–62, and the Numbers for 1863; with the proportion of the Average Numbers to the Population for each period of Ten Years.

YEAR.	SENTENCED TO DEATH.		EXECUTED.	
	For Murder.	Total Number.	For Murder.	Total Number.
1823 . . .	21	241	18	61
1824 . . .	49	295	41	60
1825 . . .	17	181	9	18
1826 . . .	28.	281	17	34
1827 . . .	22	346	12	37
1828 . . .	33	211	16	21
1829 . . .	28	224	21	38
1830 . . .	28	262	14	39
1831 . . .	27	307	25	37
1832 . . .	19	319	17	39
Average of the ten years	27·2	266·7	19·0	38·4
Proportion of the average to Population	one in 267,816	one in 27,313	one in 383,400	one in 189,703
1833 . . .	38	237	26	39
1834 . . .	49	197	31	43
1835 . . .	31	179	19	27
1836 . . .	22	175	12	14
1837 . . .	21	154	10	10
1838 . . .	8	39	3	3
1839 . . .	30	66	15	17
1840 . . .	15	43	—	—
1841 . . .	17	40	5	5
1842 . . .	11	25	4	4
Average of the ten years	24·2	115·5	12·5	16·2
Proportion of the average to Population	one in 329,390	one in 69,015	one in 637,700	one in 492,053

STATEMENT OF PERSONS SENTENCED TO DEATH, ETC.—*continued.*

YEAR.	SENTENCED TO DEATH.		EXECUTED.	
	For Murder.	Total Number.	For Murder.	Total Number.
1843 . . .	12	16	4	5
1844 . . .	19	20	8	9
1845 . . .	9	13	3	3
1846 . . .	9	14	4	7
1847 . . .	23	25	8	18
1848 . . .	44	60	24	28
1849 . . .	—	1	—	—
1850 . . .	15	17	8	8
1851 . . .	11	17	2	2
1852 . . .	14	22	3	6
Average of the ten years	15·6	20·5	6·4	8·6
Proportion of the average to Population	one in 472,035	one in 359,207	one in 1,150,586	one in 85[illegible],250
1853 . . .	13	15	7	9
1854 . . .	4	6	3	4
1855 . . .	4	5	—	—
1856 . . .	6	8	2	3
1857 . . .	5	8	—	—
1858 . . .	5	8	4	4
1859 . . .	2	2	—	—
1860 . . .	5	7	2	2
1861 . . .	1	2	1	1
1862 . . .	6	6	4	4
Average of the ten years	5·1	6·7	2·3	2·7
Proportion of the average to Population	one in 1,210,916	one in 921,742	one in 2,685,076	one in 2,287,287
1863 . . .	3	4	3	4

N.B.—The proportion to population is calculated on the mean numbers of two Censuses for each period, 1821 and 1831, 1831 and 1841, 1841 and 1851, 1851 and 1861.

NOTES.

Note (A).

'For their images, some of them were brought to London, and were there at St. Paul's Cross, in the sight of all the people, broken; that they might be fully convinced of the juggling impostures of the monks. And in particular, the crucifix of Boxley, in Kent, commonly called the *Rood of Grace*, to which many pilgrimages had been made; because it was observed sometimes to bow, and to lift itself up, to shake and to stir head, hands, and feet, to roll the eyes, move the lips, and bend the brows; all which were looked on by the abused multitude, as the effects of a divine power. These were now publicly discovered to have been cheats. For the springs were showed by which all these motions were made. Upon which John Hilsey, then Bishop of Rochester, made a sermon, and broke the rood in pieces. There was also another famous imposture discovered at Hailes, in Gloucestershire; where the blood of Christ was showed in a vial of crystal, which the people sometimes saw, but sometimes they could not see it: so they were made believe, that they were not capable of so signal a favour as long as they were in mortal sin; and so they continued to make presents, till they bribed Heaven to give them the sight of so blessed a relic. This was now dis-

covered to have been the blood of a duck, which they renewed every week: and the one side of the vial was so very thick, that there was no seeing through it, but the other was clear and transparent: and it was so placed near the altar, that one in a secret place behind could turn either side of it outward. So when they had drained the pilgrims that came thither, of all they had brought with them, then they afforded them the favour of turning the clear side outward: who upon that went home very well satisfied with their journey, and the expense they had been at. There was brought out of Wales a huge image of wood, called *Darvel Gatheren*, of which one Ellis Price, visitor of the diocese of St. Asaph, gave this account: On the 6th of April, 1537, "That the people of the country had a great superstition for it, and many pilgrimages were made to it: so that the day before he wrote, there were reckoned to be above five or six hundred pilgrims there: some brought oxen and cattle, and some brought money; and it was generally believed, that if any offered to that image, he had power to deliver his soul from hell." So it was ordered to be brought to London, where it served for fuel to burn Friar Forrest. There was an huge image of our Lady at Worcester, that was had in great reverence; which, when it was stripped of some veils that covered it, was found to be the statue of a bishop.'—*Burnet's History of the Reformation*, vol. i. p. 242.

'But the richest shrine in England was that of Thomas Beckett, called St. Thomas of Canterbury the Martyr. For three hundred years he was accounted one of the greatest saints in heaven, as may appear from the accounts in the Ledger-books, of the offerings made to the three greatest altars in Christ's Church, Canterbury. The one was to Christ, the other to the Virgin, and the third to St. Thomas. In one year there was offered at Christ's altar £3. 2*s*. 6*d*.; to the Virgin's altar, £63. 5*s*. 6*d*.; but to St. Thomas's altars, £832. 12*s*. 3*d*.

But the next year the odds grew greater: for there was not a penny offered at Christ's altar, and at the Virgin's only £4. 1*s.* 8*d.*; but at St. Thomas's, £954. 6*s.* 3*d.* By such offerings, it came that his shrine was of inestimable value. There was one stone offered there by Louis VII. of France, who came over to visit it in a pilgrimage, that was believed the richest in Europe.'—*Burnet's History of the Reformation*, vol. i. p. 244.

NOTE (B).

The following speech of Secretary Cecil, on monopolies, is altogether characteristic of the reign of Elizabeth:—

Mr. Secretary Cecil stood up, and said, 'There needs no supply of the memory of the Speaker: but, because it pleased him to desire some that be about him to aid his delivery, and because the rest of my fellows be silent, I will take upon me to deliver something which I both then heard and since know. I was present with the rest of my fellow-councillors, and the message was the same that hath been told you; and the cause hath not succeeded from any particular course thought upon, but from private informations of some particular persons. I have been very inquisitive of them, and of the cause why more importunity was now used than afore; which, I am afraid, comes by being acquainted with some course of proceeding in this House. There are no patents now of force, which shall not presently be revoked; for what patent soever is granted, there shall be left to the overthrow of that patent a liberty agreeable to the law. There is no patent if it be '*malum in se*,' but the Queen was ill apprised in her grant. But all to the generality be unacceptable, I take it, there is no patent whereof the execution has not been injurious. Would that they had never been granted! I hope there shall never be more. (All the House said, Amen.) In particular, most of these patents

have been supported by letters of assistance from Her Majesty's Privy Council: but whosoever looks upon them shall find, that they carry no other style than with relation to the patent. I dare assure you, from henceforth there shall be no more granted. They shall all be revoked. But to whom do they repair with these letters? To some out-house, to some desolate widow, to some simple cottage, or poor ignorant people, who rather than they would be troubled, and undo themselves by coming up hither, will give anything in reason for these caterpillars' satisfaction. The notice of this is now public, and you will perhaps judge this to be a tale to serve the time. But I would have all men to know thus much, that it is no jesting with a court of Parliament, neither dares any man (for my own part I dare not) so mock and abuse all the states of this kingdom, in a matter of this consequence and importance. I say, therefore, there shall be a proclamation general throughout the realm, to notify her Majesty's resolution in this behalf. And because you may eat your meat more savoury than you have done, every man shall have salt as good and cheap as he can buy it or make it, freely, without danger of that patent, which shall be presently revoked. The same benefit shall they have which have cold stomachs, both for *aqua vitæ* and *aqua composita*, and the like. And they that have weak stomachs, for their satisfaction shall have vinegar and elegar, and the like, set at liberty. Train-oil shall go the same way; oil of blubber shall march in equal rank; brushes and bottles endure the like judgment. The patent for pouldavy, if it be not called in, it shall be. Woad, which, as I take it, is not restrained either by law or statute, but only by proclamation, (I mean from the former sowing,) though for the saving thereof it might receive good disputation, yet for your satisfaction, the Queen's pleasure is to revoke that proclamation; only she prayeth thus much, that when she cometh on

progress to see you in your counties, she be not driven out of your towns by suffering it to infect the air too near them. Those that desire to go sprucely in their ruffs may, at less charge than accustomed, obtain their wish; the patent for starch, which hath so much been prosecuted, shall now be repealed. But not to make any further performance of the well-uttered and gravely and truly delivered speech of the Speaker, I must crave your favours a little longer to make an apology for myself. I have held the favour of this House as dear as my life, and I have been told that I deserved to be taxed yesterday of the House. I protest my zeal to have the business go forward in a right and hopeful course; and my fear to displease her Majesty by a harsh and rash proceeding made me so much to lay aside my discretion, that I said, it might rather be termed a school than a council, or to that effect. But by this speech, if any think I called him school-boy, he both wrongs me and mistakes me.

'Shall I tell you what Demosthenes said to the clamours which the Athenians made? That they were *pueriles et dignos pueris.* And yet that was to a popular state. And I wish that, whatsoever is here spoken, may be buried within these walls. Let us take example of the Jewish synagogue, who would always *sepelire senatum cum honore,* and not blast their own follies and imperfections. If any man in this House speak wisely, we do him great wrong to interrupt him; if foolishly, let us hear him out,—we shall have the more cause to tax him. And I do heartily pray that no Member of this House may *plus verbis offendere quam consilio juvare.*'—*New Parliamentary History,* vol. i. p. 934; 1601.

Note (C).

Speaking of the imprisonment of Mr. Wentworth, who was committed, by order of the House, to the Tower, for a speech

in which he said the Queen had committed dangerous faults, Mr. Hume says, 'The issue of the affair was, that after a month's confinement, the Queen sent to the Commons, informing them, that, from her special grace and favour, she had restored him to his liberty, and to his place in the House. By this seeming lenity, she indirectly retained the power which she had assumed of imprisoning the Members, and obliging them to answer before her for their conduct in Parliament. And Sir Walter Mildmay endeavoured to make the House sensible of her Majesty's goodness, in so gently remitting the indignation which she might justly conceive at the temerity of their Member. But he informed them, that they had not the liberty of speaking what and of whom they pleased; and that indiscreet freedoms, used in that House, had, both in the present and foregoing ages, met with a proper punishment. He warned them, therefore, not to abuse further the Queen's clemency, lest she be constrained, contrary to her inclination, to turn an unsuccessful lenity into a necessary severity.'*

This account is somewhat incorrect. Upon referring to the journal of Sir Simon D'Ewes, which Mr. Hume has quoted, we find that the Queen did not inform the House by her message, that she had restored Mr. Wentworth to his liberty and his place in the House; but that 'whereas a Member of the same, on the first day of this session, February 8th, in a set speech, uttered divers offensive matters against her Majesty, and for the same had been committed prisoner to the Tower *by that House*, yet her Majesty was graciously pleased to remit her justly occasioned displeasure for the said offence, and to refer the enlargement of the party *to the House*.' So that she by no means 'indirectly retained the power which she had assumed of imprisoning the Member,' by her proceedings in this case, whatever they may have been on other occasions. This

* Hume, vol. v. 4to, p. 240.

explanation, too, takes away the edge from Sir Walter Mildmay's speech, the important part of which I here subjoin. It will be seen, that it consists of generalities, and that Mr. Hume has culled out those parts only which suited his theory. It must never be forgotten in reading Mr. Hume, that he found an opinion established in England, that the Stuarts had governed like tyrants, and Elizabeth like a good patriot. He attacked this, as he did all other established opinions, from a love of argument and of paradox. He is to the Whig writers and historians what Bayle is to the ancient and modern philosophers. Sometimes he goes so far as to doubt the benefit of liberty altogether. But it is time to pass to Sir Walter Mildmay.—'That for so gracious a dealing it was our bounden duties to yield unto her Majesty our most humble and hearty thanks, and to beseech Almighty God to enlarge her days as the only stay of our felicity; and not only so, but to learn also, by this example, how to behave ourselves hereafter; and not, under the pretence of liberty, to forget our bounden duty to so gracious a Queen. True it is, that nothing can be well concluded in a council, where there is not allowed, in debating of causes brought in, deliberation, liberty, and freedom of speech; otherwise, if in consultation men be either interrupted or terrified, so as they cannot, nor dare not, speak their opinions freely, like as that council cannot but be reputed for a servile council; even so all the proceedings therein shall be rather to satisfy the wills of a few, than to determine that which shall be just and reasonable. But herein we may not forget to put a difference between liberty of speech and licentious speech; for by the one men deliver their opinions freely, and with this caution, that all be spoken pertinently, modestly, reverently, and discreetly; the other contrariwise uttereth all impertinently, rashly, arrogantly, and irreverently, without respect of person, time, or place; and though freedom of speech hath always been

used in this great council of Parliament, and is a thing most necessary to be preserved amongst us, yet the same was never, nor ought to be, extended so far, as though a man in this House may speak what and of whom he list. The contrary whereof, both in our own days and in the days of our predecessors, by the punishment of such inconsiderate and disorderly speakers, hath appeared. And so to return, let this serve us for an example, to beware that we offend not in the like hereafter, lest that, in forgetting our duties so far, we may give just cause to our gracious Sovereign to think that this her clemency hath given occasion of further boldness, and thereby so much grieve and provoke her, as, contrary to her most gracious and mild consideration, she be constrained to change her natural clemency into necessary and just severity; a thing that I trust shall never happen amongst wise and dutiful men, such as the members of this House are thought always to be.'

This speech, with a very few alterations in language, would make a fair official speech in our own day.

Note (D).

The same cause may have operated with Napoleon against the life of the Duc d'Enghien. It is singular also, that in the rest of the chapter, Machiavel seems to have given directions to persons in the situation of Cromwell and Bonaparte. He tells us, that those who have become '*tiranni*' of their country ought to examine what the people wish for; and that they will always find they wish for two things: the one, revenge upon those who have been the cause of their servitude; and the other, the restoration of their liberty. In the first of these, the new prince may satisfy them completely. In the second, he may satisfy them in part. For if he analyses the wish of the people

for liberty, he will find that a small part only desire it for the sake of power, and that the great majority only desire liberty, that they may live in security. The few he may either remove, or raise to such posts and dignities as will satisfy them; the many will be contented by the enactment of just laws, and a strict observance of them on the part of the sovereign. Thus, he says, the kings of France disposed of the arms and money of the State; but in other things, obeyed the laws. Napoleon, who was a great reader of Machiavel, seems to have taken the advice which is here given by the most profound of political writers.

Note (E).

It may not be uninteresting to the reader, to read an account of two cases in which the poor man, with the law on his side, triumphed over the pretensions of the highest persons in the kingdom. The first is the more curious, as a relation of it is contained in a letter of Lord Thûrlow to a nephew of Mr. Justice Foster. It was a prosecution against the Princess Amelia for stopping up a foot-path in Richmond Park.

'Dear Sir,

'I write, at the hazard of your thinking me impertinent, to give you the pleasure of hearing that of your uncle, which, in all probability, you will not hear from him,—I mean the great honour and general esteem which he has gained, or rather accumulated, by his inflexible and spirited manner of trying the Richmond cause, which has been so long depending, and so differently treated by other judges. You have heard what a deficiency there was of the special jury, which was imputed to their backwardness to serve a prosecution against the Princess. He has fined all the absentees £20 apiece. They made him wait two hours, and, at last, resort to a *tales*. When the prosecutors

had gone through part of their evidence, Sir Richard Lloyd, who went down on the part of the Crown, said, that it was needless for them to go on upon the right, as the Crown was not prepared to try that, this being an indictment which could not possibly determine it, because the obstruction was charged to be in the parish of Wimbledon, whereas it was, in truth, in Mortlake, which was a distinct parish from Wimbledon. They maintained their own poor, upheld their own church, and paid tithes to their own parson; and Domesday Book mentions Mortlake. On the other side, it was said that Domesday Book mentions it as a baron's fee, and not as a parish; and that the survey in the time of Henry VIII. mentions Wimbledon *cum capellis suis annexis*, and also, that a grant of it in the time of Edward VI. makes a provision of tithes for the vicar, to officiate in the chapel of Mortlake. The judge turned to the jury, and said, he thought they were come there to try a right which the subject claimed to a way through Richmond Park, and not to cavil about little law objections, which have no relation to that right. He said, it is proved to be in Wimbledon parish; but it would have been enough, if the place, in which the obstruction was charged, had been only reputed to be in Wimbledon, because the defendant and jury must have been as sensible of that reputation as the prosecutors; but had it not been so, he should have thought it below the honour of the Crown, after this business had been depending three assizes, to send one of their select council, not to try the right, but to hinge upon so small a point as this. Upon which Sir Richard Lloyd made a speech, setting forth the gracious disposition of the King in suffering this cause to be tried, which he could have suppressed with a single breath, by ordering a *nolle prosequi* to be entered. The judge said, he was not of that opinion. The subject is interested in such indictments as these, for continuing nuisances, and can have no remedy but this, if

their rights be encroached upon; wherefore he should think it a denial of justice to stop a prosecution for a nuisance, which his whole prerogative does not extend to pardon. After which the evidence was gone through; and the judge summed up shortly, but clearly, for the prosecutors.*

'It gave me, who am a stranger to him, great pleasure to hear that we have one English judge, whom nothing can tempt or frighten, ready and able to hold up the laws of his country, as a great shield of the rights of the people. I presume it will give you still greater to hear that your friend and relation is that judge: and that is the only apology I have to make for troubling you with this.

'I am, dear Sir,

'Your most humble Servant,

'E. THURLOW.'

Fig-Tree Court, Inner Temple,
April 11, 1758.

Life of Sir M. Foster, p. 85.

The other case is related of the father of Mr. Horne Tooke, a poulterer, in London.

'As Mr. Horne lived in Newport Street, he was, of course, a near neighbour to His Royal Highness Frederic, Prince of Wales, father to his present Majesty, who then kept his court at Leicester House. Some of the officers of the household, imagining that an outlet towards the market would be extremely convenient to them, as well as the inferior domestics, orders were immediately issued for this purpose. Accordingly, an adjoining wall was cut through, and a door placed in the opening, without any ceremony whatsoever, notwithstanding it was a palpable encroachment on, and violation of, the property of a private individual. In the midst of this operation, Mr.

* The defendant was convicted. See Burr. 908, 909.

Horne appeared, and calmly remonstrated against so glaring an act of injustice, as the brick partition actually appertained to him, and the intended thoroughfare would lead through, and consequently depreciate the value of his premises.

'It soon appeared, however, that the representations of a dealer in geese and turkeys, although backed by law and reason, had but little effect on those who acted in the name, and, in this instance, abused the authority of a prince, who was probably unacquainted with the circumstances of the transaction.

'On this, he appealed from "the insolence of office" to the justice of his country; and, to the honour of our municipal jurisprudence, the event proved different from what it would have been, perhaps, in any other kingdom of Europe; for a tradesman of Westminster triumphed over the heir-apparent of the English crown, and orders were soon after issued for the removal of the obnoxious door.'—*Life of Horne Tooke*, vol. i. p. 11.

Note (F).

Mr. Hume makes what I conceive to be a remark calculated to mislead, when he says, in his history of Charles I.,—'Some men of the greatest parts and most extensive knowledge that the nation at this time produced, could not enjoy any peace of mind, because obliged to hear prayers offered up to the Divinity by a priest covered with a white linen vestment.'

The point is certainly ingenious, but, as I conceive, obtained by a sacrifice of candour. Both parties allowed that the surplice was in itself a matter of indifference. The objections to the orders concerning the surplice alleged on the part of the Puritans were three:—

1st. That as it was in its essence a matter of indifference, it ought not to be enjoined like an article of faith, but every one should be left to do as he pleased.

2nd. That although in itself a matter of indifference, it was not so to the common people; for many of them thought no worship to God could be effectual, unless performed in a consecrated garment, and thus the practice kept alive a superstitious notion.

3rd. Above all, the Puritans urged that no secular person had the right to give orders on this subject. Mr. Cartwright says, 'Christ, and no other, is head of the church. No civil magistrate, in councils or assemblies for church matters, can either be chief moderator, overruler, judge, or determiner; nor has he such authority as that without his consent it should not be lawful for ecclesiastical persons to make church-orders or ceremonies.'*

In the same sense Mr. Axton, when examined by his bishop, said, 'I admit Her Majesty's supremacy so far as if there be any error in the governors of the church, she has power to reform it; but I do not admit her to be an ecclesiastical elder or church governor.'† It is true the Puritans would call the surplice 'idolatrous geare,' and other worse names, when they had grown warm in controversy; but they told Archbishop Parker that had the habits and a few ceremonies been left indifferent, they never would have left the church; but 'it was the compelling these things by law made them separate.'‡

In fine, the doctrine of the Puritans, or Presbyterians, asserted the 'word of God contained in the Old and New Testament to be a perfect rule of faith and manners.'§ They maintained that the church ought to be governed by this rule only,—that ceremonies and observances should be as few as possible, and should not be imposed by command of any superior whatever, but left to the free choice of the church itself. They condemned not other churches that differed in ceremonies from

* Neale, vol. i. p. 133. † *Ibid.* p. 260. ‡ *Ibid.* p. 230.

§ Confession of Faith of Members of the Prophesyings. Neale, p. 276.

theirs, but protested against all dictation on the subject. They held that 'no pastor ought to usurp dominion over another;' and that 'the pastor should be chosen by the congregation.'*

Thus we see that the question of the surplice was connected with a great scheme of ecclesiastical reform,—a scheme adopted and established in the native country of Mr. Hume; and which, whatever may be thought of its efficacy to make men better and wiser, was at least not unworthy of 'men of the greatest parts and most extensive knowledge.'

Note (G).

This Act was passed in 1664. There is nothing more remarkable in our history, or less noticed, than the noble manner in which the Dissenters forgot, in favour of the common cause, the severity with which they were treated. In 1672 they urged the House of Commons to pass the Test Act without any clause in their favour, contenting themselves with a motion for a separate bill of toleration, which was not likely to pass. After the persecution of the reign of Charles II. they joined the church during the reign of James; neither alienated by the harsh treatment they had received, nor allured by the indulgence offered on the part of the King. It is to be regretted that the church have found it inconsistent with their duty to imitate the liberality and public spirit of their dissenting brethren.

* Confession of Faith of the Prisoners in Newgate, Neale.

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